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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 374.

THE SUSQUEHANNA BOOM COMPANY, H. BROWN, CHARLES HIBARD, ET AL., PLAINTIFFS IN ERROR,

vs.

THE WEST BRANCH BOOM COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED OCTOBER 10, 1881.

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IN THE SUPREME COURT OF THE UNITED STATES.

The Susquehanna Boom Company, H. Brown, Charles Hibard, Jas. V. Brown, B. C. Bowman & Company, Eder, Housel & Deemer A. C. Finney, E. B. Campbell, Supt., John G. Reading, Charles Bartles, John G. Reading, Executor, Agustus G. Richey, William P. Emery, Judiah Higgins and George H. Bartles trading as Reading, Fisher & Company, Plaintiffs in Error, and Plaintiffs below	Issue Writ of Error to the Supreme Court of Pennsylvania. in this case, No. 1, January Term, 1877. There, as per accompanying *Allo-catur* and bond.
VERSUS	
The West Branch Boom Company, Defendant in error and Defendant below.	

WILLIAM A. WALLACE.

Attorney for Plaintiff in Error, March 19, 1881.

To the Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the Supreme Court of the State of Pennsylvania.

GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Pennsylvania, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Susquehanna Boom Company, H. Brown, Charles Hibard, James V. Brown, B. C. Bowman & Company, Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Superintendent John G. Reading, Charles Bartles, John G. Reading, Executor, Augustus G. Richey, Wm. P. Emery, Judiah Higgins and George H. Bartles, trading as Reading, Fisher & Co., Plaintiffs, and The West Branch Boom Company, Defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission:

a manifest error hath happened to the great damage of the said Plaintiffs as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the *Supreme Court of the United States*, together with this writ, so that you have the same at Washington, on the Second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable MORRISON R. WAITE, Chief Justice of the said Supreme Court, the Nineteenth day of March, in the year of our Lord one thousand eight hundred and eighty-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

JOSEPH P. BRADLEY,
Associate Justice Supreme Court.

CERTIFIED COPY OF BOND.

Supreme Court of the United States:

The Susquehanna Boom Company, H. Brown, Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Supt., J. G. Reading, Charles Bartles, John G. Reading, Executor, Augustus G. Richey, Wm. P. Emery, Judiah Higgins, and George H. Bartles, trading as Reading, Fisher & Co,, Plaintiffs,

VERSUS.

The West Branch Boom Company, Defendant.

In Error to the Supreme Court of Pennsylvania, No. 1, January Term, 1877, of that Court in Equity.

Know all men by these presents, That we The Susquehanna Boom Company, John G. Reading and J. M. Gazzam, all of the State of Pennsylvania, are held and firmly bound unto The West Branch Boom Company in the sum of two thousand dollars, to be paid to the said The West Branch Boom Company, its successors and assigns, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals, and dated the Ninth day of March, Anno Domini, one thousand eight hundred and eighty-one.

WHEREAS the above named The Susquehanna Boom Company and others, herein before named have prosecuted a Writ of Error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the Supreme Court of Pennsylvania.

Now, the condition of the obligations is such, that if the above named, The Susquehanna Boom Company and others, Plaintiffs in Error, shall prosecute their said Writ of Error, to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void : otherwise the same shall be and remain in full force and virtue.

{ L. S. }

Sealed and delivered in the presence of Dewitt C. Carroll. } The Susquehanna Boom Co., by John G. Reading, President.

ATTEST :

GEORGE S. BAUYER, *Secretary.*

JOHN G. READING, [SEAL]
J. M. GAZZAM, [SEAL]

The above bond is approved.
March 18, 1881.

JOSEPH P. BRADLEY,
Associate Justice Supreme Court United States.

I hereby certify that the above is a true and correct copy of the bond filed in above entitled case :

In testimony whereof. I have hereunto set my hand and the seal of said Court of Philadelphia this 13th day of June, A. D., 1881.

HAROLD P. NEWLIN, Prothonotary.
CHARLES S. GREENE, Prothonotary.

{ L. S. }

THE UNITED STATES OF AMERICA,

To The West Branch Boom Company

Greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Pennsylvania, wherein The Susquehanna Boom Company, H. Brown, Charles Hebard, James V. Brown, B. C. Bowman & Company, Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Superintendent, John G. Reading, Charles Bartles, John G. Reading, Executor, Augustus G. Richey, William P. Emery, Judiah Higgins and Geo. H. Bartles trading as Reading, Fisher & Company, Plaintiffs in error, and you are Defendant in error, to show cause, if any there be, why the judgment, rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MORRISON R. WAITE, Chief Justice of the Supreme Court of the United States, this nineteenth day of March, in the year of our Lord one thousand eight hundred and eighty-one.

JOSEPH P. BRADLEY,

Associate Justice Supreme Court of the United States.

On this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-one, personally appeared John G. Reading Jr., before me, the subscriber, Clerk of the Circuit Court of the United States for the Western District of Pennsylvania, and makes oath that he delivered a true copy of the within citation to Nehemiah Shaw, President of the West Branch Boom Company within named. JOHN G. READING, JR.

Sworn to and subscribed the twenty-third day of May, A. D. 1881. B. S. BENTLEY, Jr.

Clerk United States Circuit Court, Western District Pennsylvania.

SUSQUEHANNA BOOM COMPANY, ET. AL.

VS

WEST BRANCH BOOM COMPANY.

Petition for Allocatur.

WRIT OF ERROR,

ALLOWED AS ASKED FOR MARCH 18, 1881.

JOSEPH P. BRADLEY,

Associate Justice Supreme Court, U. S.

To the Honorable Joseph P. Bradley Justice of the Supreme Court of the United States.

The Petition of the Susquehanna Boom Company, a corporation existing under the laws of the State of Pennsylvania, John G. Reading, and others by their attorney William A. Wallace.

HUMBLY SHEWETH:

That a bill in equity on behalf of your petitioners and against the West Branch Boom Company, a corporation also existing under the laws of the State of Pennsylvania, was filed in the Supreme Court of Pennsylvania to No. 1, January Term 1877 and was therein proceeded in by answer, reference to master, report, and argument, to final decree by the said Court, being the Court of last

resort in that State, which decree dismissed the said bill of the Plaintiff. That an application for re-argument of the same was made to the said Court and refused. Copies of the bill, answer, brief of argument, opinion and decree, and application for re-argument are herewith produced.

That in this subject matter a fidoral question is involved which has been decided against your petitioners, and the practical result of such decision is, to impair the obligation of the contract entered into by the State with the Susquehanna Boom Company, and to destroy the vested rights of the Stockholders in the franchises granted thereby.

The said Company was incorporated March 26, 1846, was given power to stop *all* logs floating in the West Branch of the Susquehanna River, and to raft out the same and charge toll or boomage thereon.

On the faith of this Charter large sums of money were expended investments of capital made, and extensive boom structures erected, at Williamsport, on the faith of which many mills for manufacturing lumber have been erected, and the right to receive *all* the logs floating in the stream, to raft them out and to receive boomage therefor was the essential consideration upon which money was invested in the capital stock of the said Susquehanna Boom Company, and the boom erected.

That the West Branch Boom Company Defendant was incorporated, subsequently viz: March 29, 1849, to be located at Lock Haven about twenty-two miles above, on the same river. By the terms of its charter it was expressly confined to *one half* of the river and its booms were "to be so constructed as to admit the safe passage of rafts, boats, logs, masts, spars or other lumber."

This clause was for the protection of the rafting interest and of the rights vested under the Susquehanna Boom Company's charter and for many years no claim to close the *whole* river was made or exercised; a short time prior to the institution of the proceedings in this case, the defendant so constructed its booms, as to throw the whole of the logs passing down the river into its boom, and thus prevented any logs passing to the old boom, except through the works of the new one. The bill in this case was filed to test the right to do this, and the vital question

at issue between the two booms was, the power of the younger one, to close the channel of the stream. The Supreme Court of Pennsylvania by a divided court has affirmed the right of the West Branch Boom Company to do this and by this decision has destroyed the value of the property of the Plaintiff by taking away its franchise to receive, stop, and take boomage upon all logs destined for points below Lock Haven, and by enabling the new corporation to raft out and send by canal and otherwise, large quantities of logs to Williamsport and points below, without passing through the works of the Susquehanna Boom Company.

Your petitioners believe and so argued to the Supreme Court of Pennsylvania.

"That the charter to the West Branch Boom Company must "be so construed as to protect the grant previously made to the "Susquehanna Boom Company, otherwise the grant to the West "Branch Boom Company impairs the obligation of the said contract "with the Susquehanna Boom Company: and the decision of that "Court upon the subject matter involved actually does take away "the rights of the Susquehanna Boom Company contracted for by "it, paid for by it, and used for many years under the plain terms "of its prior charter."

Wherefore, your petitioners (herewith presenting a bond with security for approval) pray, that a writ of error may be allowed to issue to the said Supreme Court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the constitution and laws thereof, and that the citation to the defendant may accompany the same, and they will pray, &c.

THE SUSQUEHANNA BOOM COMPANY,

H. BROWN,

By JOHN G. READING, *et. al.*

WILLIAM A. WALLACE, their Attorney.

COPY OF DOCKET ENTRIES.

JANUARY TERM, 1877.

The Susquehanna Boom Company, H. Brown, Chas. Hebard, James O. Brown, B. C. Bowman & Co., Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Supt., Reading, Fisher & Co.

vs.

The West Branch Boom Company.

Bill in equity filed March 27, 1877.
Injunction Affidavit filed, also bond in $50,000.
Approved by Paxson J. and Injunction exit.
(See minute book, page 238.)

May 21, 1877. It is ordered that the injunction in this case be continued until final hearing. Per Curain.

June 12, 1877. Answer filed.

February 15, 1878. M. F. Elliott of Tioga County, Pennsylvania, is appointed Master and examiner in Chancery in this case with the usual forms of Master in Chancery.

Agreement filed.

March 18, 1878. It is ordered by the Court that an attachment be issued against Thomas Yardley Esq. Secretary and Treas-

urer of the Defendants above named as for a contempt in disobeying, The special injunction of this Court heretofore granted against the use of a certain wing or shear boom of the said Defendants, attached to the northerly shore of the west branch of the river Susquehanna. Provided that if the said Defendants shall forthwith and without delay, remove the said wing or shear boom from its position and attachment as aforesaid and take the same into secure custody at some proper place within their own boom where it cannot be used surreptitiously by others, then the attachment may be returned by the Sheriff into whose hands it shall come without executing the same and a full return of the facts made by him upon the writ.

Ordered by the Court.

D. A. *Chief Justice.*

April 8, 1880. Special injunction returned, viz: Served the within junction on the West Branch Boom Company within named by reading the same to Thomas Yardley, Secretary and Treasurer and Joseph McGill, Boom Master of said West Boom Company and also by reading the same to D. I. Chattam an Employe of said West Branch Boom Company in charge of said shear boom.

John Pratt, Deputy Sheriff of Lycoming county, sworn to and subscribed before Wm. Follmer, Prothonotary, April 7, 1880.

June 21, 1880. It is now ordered, adjudged and decreed that the Plaintiffs bill be dismissed with costs.

Mercer, J. } Dissents. Opinion by Gordon, J.
Green, J. }

August 2d, 1878. Replication filed.

February 25, 1879. Masters Report filed.

Eodie Exceptionis to Master's Report filed and testimony.

Defendants bill of cost filed.
$524.21, September 14, 1880, and Præcipe for *Fi Fa.*
Prothonotary Snodgrass, $10.00.

November 26, 1880. Defendant's bill of costs taxed by Prothonotary, and reduced $14.75.

Fi Fa issued to No. 1, January T. 1881.

May 5, 1880. The complainants by their Attorneys, Bentley & Parker, move the Court for an attachment for contempt for not obeying preliminary injunction *Eodie* argued by J. O. Parker and B. S. Bentley for motion.

S. D. Ball & S. R. Peale, *contra.*

May 6, 1880. Order on application for Attachment for contempt filed (pro at decree filed.)

June 2d and 3d, 1880. Sur Exceptions to Master's Report, S. D. Ball & S. R. Peale, for Exceptants.

J. O. Parker, *contra.*

June 21, 1880. Bill dismissed with costs.

Per Cunain.

The Susquehanna Boom Company, *et. al.* } Equity Dockets.
vs. } Jan. Term, 1877.
The West Branch Boom Company.

I hereby certify that the above and foregoing is a true and correct copy of the Docket Entries in the above entitled case, so full and entire as appears of record in our said Supreme Court.

In testimony whereof, I have hereunto set my hand and seal of said Court at Philadelphia, this Thirteenth day of June A. D., 1881.

HAROLD P. NEWLIN, Prothonotary.
CHARLES S. GREENE, Prothonotary.

IN THE SUPREME COURT OF

PENNSYLVANIA.

The Susquehanna Boom Company, H. Brown, Charles Hebard, Jas. V. Brown, B. C. Bowman & Company, Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Supt. John G. Reading, Charles Bartels, John G. Reading, Executor., Augustus G. Richey, Wm. P. Emery, Judiah Higgins and George H. Bartels trading as Reading, Fisher & Co., Plaintiffs.

The West Branch Boom Company, Defendant.

IN EQUITY.

To the Honorable the Judges of the Supreme Court of Pennsylvania.

Your orators complain and say:

That the said Susquehanna Boom Company is a corporation, created by and under an act of the General Assembly of the Commonwealth of Pennsylvania, approved the 26th day of March A. D., 1846.

That by the second section of said act it is provided *inter alia.* "That the said corporation are authorized and empowered to erect

and maintain on the West Branch of the River Susquehanna between the borough of Williamsport and the mouth of Quinesheocque creek such boom or booms with piers as may be necessary for the purpose of stopping and securing logs, masts, spars, and other lumber floating upon said river and erect such piers, side-branch or sheer-booms as may be necessary for that purpose."

That by a supplement to said act of incorporation approved the 28th day of April A. D., 1864, it was provided *inter alia*; "That it shall and may be lawful for said Boom Company to extend their said booms up the said Susquehanna River from time to time and at such points or places on said stream as the Company shall determine that the public interest requires."

That in pursuance of the rights and privileges granted to said corporation complainant by the said act of incorporation and the supplements thereto it did within a short time after its incorporation erect on the West Branch of the Susquehanna River such boom or booms with piers as were necessary for the purpose of stopping and securing logs, masts, spars, and other lumber floating upon said river and did erect such piers, side-branch or sheer-booms as were necessary for that purpose and has continously maintained from that time to the present such booms with piers, side-branch and sheer-booms within the limits prescribed by the said act of incorporation and the supplements thereto.

That from the time of the erection of the said booms the said Susquehanna Boom Company have stopped and secured annually by means of said booms so erected as aforesaid a large quantity of logs, masts, spars, and other lumber belonging to individual owners and companies designed to be stopped and secured in the said booms of the Susquehanna Boom Company, and to be manufactured in the immediate vicinity of the said booms, upon all of which logs, masts, spars, and other lumber the said Susquehanna Boom Company are entitled to receive and have received annually a large amount of tolls or boomage as provided in the said Act of Incorporation and the several supplements thereto.

That your orators, H. Brown, Charles Hebard, James V. Brown, B. C. Bowman, Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Superintendent, are, and for several years last past have been the owners of large and valuable tracts of land situated in the

State of Pennsylvania and upon the headwaters of the West Branch of the Susquehanna River; that said tracts of land are principally valuable as timber lands having large forests of pine, hemlock, oak and other valuable timber growing thereon; that they are also the owners of valuable saw-mill properties in and near the city of Williamsport, Pa., and are engaged in the manufacture of lumber from the timber taken from their said lands at their mills aforesaid; that the only method of conveying their timber from the lands above described to their mills in Williamsport is by floating the same in the log down the West Branch of the Susquehanna River, which is by law a public highway, and procuring their logs to be stopped and secured in the booms of the said Susquehanna Boom Company, situated at and near Williamsport; that they have invested large sums of money in the purchase of timber lands on the headwaters of said river and in the purchase and erection of saw-mill properties, at Williamsport, in the immediate vicinity of said booms, and have for many years past been engaged in cutting the timber upon their lands and causing the same to be driven and floated along said river, until they were stopped and secured by the booms of the said Susquehanna Boom Company, whence they could be easily rafted and taken to their mills in the immediate vicinity for manufacture and, having large quantities of timber still standing upon their said lands, are desirous of continuing to cut and drive their timber to the said booms for manufacture at their said mills.

That since the erection of the booms by the said Susquehanna Boom Company as herein before set forth, and in consequence thereof, the business of the manufacture of lumber in and about the city of Williamsport, which in the year 1846 amounted to a very small quantity, has increased annually from that time until the average amount of lumber manufactured from logs stopped and secured by the said Susquehanna Boom Company for the past twelve or fifteen years has amounted to at least two hundred million (200,000,000) feet per annum.

And your orators further show that the West Branch Boom Company, Defendant, was incorporated by an Act of the General Assembly of the Commonwealth of Pennsylvania, approved the 29th day of March, A. D., 1849, wherein it is provided by the second section thereof *inter alia*; "That the said corporation

are authorized and empowered to erect and maintain on the South side of the West Branch of the river Susquehanna between a point opposite the mouth of Heiners Run, and the mouth of Bald Eagle Creek, such-boom or booms with piers as may be necessary for the purpose of stopping and securing logs, masts or spars, and other lumber floating upon said river and erect such piers, side-branches or sheer-booms as may be necessary for that purpose: *Provided*, That said booms shall not extend more than half way across said river, and be so constructed as to admit the safe passage of rafts, boats, logs, masts, spars, or other lumber, and not impede the navigation of said river and branches thereof;" and wherein it is further provided by the *Seventh Section* thereof "That should any person or persons have lumber upon, said river, which they are desirous of driving below the limits of said booms, and do not wish the same to be rafted at said booms, they shall give notice in writing to said corporation of their intentions on or before the first day of March, in each year, describing the kind of lumber and its quantity as near as may be, together with the marks thereon, and the corporation upon receipts of such notice, shall be compelled to take up, and turn all such lumber through their booms as fast as the owners of such lumber, wishing to raft the same below said booms, may desire, and no faster, * * * * *Provided*, At all times that no lumber of any description shall be stopped, except upon the written request of the owner or owners of the same, and no toll or expense shall accrue to any lumber designed to run, or to be driven to any points below Lock Haven; a free and unobstructed passage shall at all times be kept open, so that the navigation of the river shall be as free as it now is."

That in pursuance of the rights and privileges granted to said corporation defendant, by said act of incorporation it did within a short time after its incorporation erect in the West Branch of the Susquehanna River, at Lock Haven, a boom or booms with piers for the purpose of stopping and securing such logs, masts, spars, and other lumber floating upon said river as the owner or owners thereof should desire by their written request to the said corporation defendant to be so stopped and secured for the purpose of manufacturing the same at their mills

in Lock Haven aforesaid; and the said defendant did extend its said boom half way across the said river and did maintain its said boom so constructed until the year 1875.

That the said boom or booms of the corporation defendant are located in said river about twenty-five miles above the city of Williamsport, aforesaid, and all logs, masts, spars, and other lumber belonging to your orators and designed by them to be floated and driven upon the said river from their timber lands to the Susquehanna Boom at Williamsport, must pass by the said boom or booms of the defendant.

And your orators further complain that in the year 1876, the said corporation defendant erected and maintained during the season for floating logs a wing or sheer-boom extending from the north side of said river half way across the same and above the upper pier of their boom as previously maintained, as represented in the plot or map hereto attached and which your orators pray may be taken as part of this their bill of complaint, by which said device the said defendant extended their booms entirely across the said river and turned *all* logs, masts, spars, and other lumber floating upon said river into their said booms at Lock Haven, and thereby preventing the safe passage of rafts, boats, logs, masts, spars, or other lumber, which said structure or sheer-boom is, as your orators aver and charge not only wholly unauthorized by the provisions of the charter of the said corporation defendant, but is in direct violation of the provisions of their charter, and is further, as your orators charge, an infringement of the rights of the said Susquehanna Boom Company, and of the rights of your orators co-complainants with said corporation who desire to have their logs driven and floated into the booms of the said Susquehanna Boom Company.

That the said company defendant have erected and hung, and, as your orators are informed and believe, intend to maintain during the present year the same or a like wing or sheer-boom on the north side of said river for the purpose of stopping and securing in its said booms *all* logs, masts, spars and other lumber what soever floating upon said river in defiance of the prohibition contained in its said charter; "That a free and unobstructed passage shall at all

times be keep open, so that the navigation of the river shall be as free as it now is," and in defiance of the rights of your orators as aforesaid.

And your orators further show that by means of the said structure complained of the said corporation defendant stopped and secured during the season of 1876 a large amount of logs belonging to your orators and others, owners of saw mills located at or near Williamsport, and designed by your orators and others, owners as aforesaid, to be driven and floated from their timber lands down the said West Branch of the Susquehanna River and into the said Susquehanna Boom at Williamsport, by which detention your orators suffered great loss and damage.

And your orators charge that the continued maintenance of the said structure during the present lumbering season as contemplated by the said defendant will cause great delay and serious damage to your orators and others engaged in the lumbering business at Williamsport aforesaid; that logs can only be floated and driven upon said river during times of high water and almost the entire quantity of logs placed in said stream and its tributaries are driven during the spring freshet and logs stopped and secured in the booms of the Company defendant cannot be passed through said booms and delivered to the owners thereof except in the regular course of rafting extending through the entire summer, and by this delay your orators will be prevented from manufacturing their logs and other lumber, so stopped by the said defendant, at their mills and from selling the same until the next succeeding season; and if the said defendant be permitted to maintain its booms as at present constructed and as contemplated your orator will suffer great and irreparable loss and damage from the stoppage of logs and other lumber placed in said stream to be floated and driven to the Susquehanna Boom, and from the illegal acts of the said defendant as above set forth in defiance of the rights of your orators as aforesaid.

And your orators, H. Brown, Charles Hebard, James V. Brown, B. C. Bowman & Co., Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, further say that they have not requested the said West Branch Boom Company in writing or otherwise to stop any of their said logs, and that they have caused to be cut and

placed in the said river and its tributaries a large quantity of logs, masts, spars, or other lumber which they desire to have driven and floated during the freshets of this spring down said river and into the said booms of the Susquehanna Boom Company, and would so drive them but for the above described illegal and unauthorized structure of the said defendant.

Wherefore in consideration of the premises your orators pray :

That the said corporation, the West Branch Boom Company, be restrained by the Writ of Injunction of this Honorable Court, preliminary until final hearing of this bill, and perpetual thereafter from erecting, hanging and maintaining the said wing or sheer-boom on the north side of the said West Branch of the Susquehanna River,

That the said West Branch Boom Company be restrained by the Writ of Injunction of this Honorable Court, preliminary until final hearing of this bill and perpetual thereafter from stopping lumber of any description except upon the written request of the owner or owners of the same,

That the said West Branch Boom Company be restrained by injunction from obstructing the passage of said River, so that the navigation of the river shall be as free for rafts, boats, logs, spars, masts, and other lumber as before the erection of its said boom it was,

And for such other and further relief as to your Honors shall seem meet.

And they will ever pray, &c.,

SUSQUEHANNA BOOM COMPANY,
Per P. HERDIC, *President.*

JAS. O. PARKER,
Solicitors for Complainants.

H. BROWN,
CHAS. HEBARD,
JAS. V. BROWN,
B. C. BOWMAN & CO.
EDER, HOUSEL & DEEMER,
A. C. FINNEY,
E. B. CAMPBELL *Supt.*
P. HERDIC,
F. COLEMAN.

State of Pennsylvania, }
County of Lycoming, } *ss.*

Peter Herdic and E. B, Campbell being duly sworn according to law, depose and say :

That the facts set forth in the above bill are true and correct so far the same are within their personal knowledge, and so far as they are stated on information and belief they verily believe them to be true.

P. HERDIC,
E. C. CAMPBELL.

Sworn and subscribed to before me this 23rd day of March, A. D., 1877.

H. C. HINCKLEY, *Notary Public.*

I certify there is not time to print,
SAM'L ERSTINE THOMPSON.

(L. S.)

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT.

IN EQUITY.

No. 1. January Term, 1877.

BETWEEN

The Susquehanna Boom Company, H. Brown, Charles Heberd, Jas. V. Brown, B. C. Bowman & Co., Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Supt., Reading, Fisher & Co.—*Plaintiffs.*

AND

The West Branch Boom Company,—*Defendant.*

State of Pennsylvania,)
City of Philadelphia.) ss.

John G. Reading and Peter Herdic, being duly sworn according to law, say:

1. That the Susquehanna Boom Company, Plaintiff, is a corporation created by and existing under an Act of the General Assembly of the Commonwealth of Pennsylvania, approved March 26, 1846.

2. That by the second section of said Act it is provided, *inter alia*, "that the said corporation are authorized and empowered to erect and maintain on the West Branch of the River Susquehanna,

between the borough of Williamsport and the mouth of the Quineshehocque creek, such boom or booms as may be necessary for the purpose of stopping and securing logs, masts, spars, and other lumber floating upon said river, and erect such piers, side branch or sheer-booms as may be necessary for that purpose."

3. That by a supplement to said Act of Incorporation, approved the 28th day of April, 1864, it was provided, *inter alia*, "that it shall and may be lawful for said Boom Company to extend their said booms up the said Susquehanna River, from time to time, and at such points or places on said stream as the Company shall determine that the public interest requires."

4. That in pursuance of the rights and privileges granted to the said corporation, complainant, by the said Act of Incorporation and the supplements thereto, the said corporation did within a short time after its incorporation, erect on the West Branch of the Susquehanna River, such boom or booms with piers as were necessary for the purpose of stopping and securing logs, masts, spars, and other lumber floating upon said river, and did erect such piers, side branches or sheer-booms as were necessary for that purpose, and has continuously maintained from time to time to the present, such booms with piers, side branch and sheer-booms, within the limits prescribed by the Act of Incorporation.

5. That from the time of the erection of the said boom the Susquehanna Boom Company have stopped and secured annually, by means of said boom so erected as aforesaid, a large quantity of logs, masts, spars, and other lumber belonging to individual owners and companies, designed to be stopped and secured in said booms by the Susquehanna Boom Company, and to be manufactured in the immediate vicinity of the said booms; upon all of which logs, masts, spars, and other lumber the said Susquehanna Boom Company are entitled to receive and have received annually, a large amount of tolls or boomage as provided in the said Act of Incorporation and the various supplements thereto.

6. That the Plaintiffs in the above suit are and for several years last past, have been the owners of large and valuable tracts of land, situate in the state of Pennsylvania, and upon the head waters of the West Branch of the Susquehanna River, that said tracts of land are principally valuable as timber lands, having large forests of pine, hemlock, oak and other valuable timber growing thereon; that they are also owners of valuable saw-mill properties in and near the city of Williamsport, Pa., and are engaged in the manufacture of lumber at their mills, from the timber taken from their said lands; that the only method of conveying their timber from the land above described to their mills at Williamsport, is by floating the same in the log down the West Branch of the Susquehanna River, which is by law a public highway, and procuring their logs to be stopped and secured in the booms of the said Susquehanna Boom Company, situate at and near Williamsport; that they have invested large sums of money in the purchase of timber lands on the head waters of said river, and in the purchase and erection of saw-mill properties at Williamsport, in the immediate vicinity of said booms, and have for many years past been engaged in cutting the timber upon their lands and causing the same to be driven and floated along said river until they were secured by the booms of the said Susquehanna Boom Company, whence they could be easily rafted and taken to their mills in the immediate vicinity for manufacture, and having large quantities of timber still standing upon their said lands are desirous of continuing to cut and drive their timber to the said booms for manufacture at their said mills.

7. That since the erection of the boom as herein before stated and in consequence thereof, the business of the manufacture of lumber in and about the city of Williamsport, which in the year 1846, amounted to a very small quantity, has increased annually from that time until the average amount manufactured from logs stopped and secured by the said Susquehanna Boom Company, for the past twelve or fifteen years has amounted to at least two hundred million feet per annum.

8. That the West Branch Boom Company, Defendant, was

incorporated by an Act of the Generally Assembly of this Commonwealth, approved March 29, 1849, wherein it is provided in the second section thereof, *inter alia*, "that the said corporation are authorized to erect and maintain on the South side of the West Branch of the River Susquehanna, between a point opposite the mouth of Hyners Run and the mouth of Bald Eagle Creek, such boom or booms with piers that may be necessary for the purpose of stopping and securing logs, masts or spars, and other lumber floating upon said river, and erect such piers, side branches or sheer-booms as may be necessary for that purpose. Provided, that said booms shall not extend more than half way across said river, and be so constructed as to admit the safe passage of rafts, boats, masts, spars, and other lumber, and not impede the navigation of said river and the branches thereof, "and it is further provided in the seventh section thereof," that should any person or persons have lumber upon said river which they are desirous of driving below the limits of said boom, and do not wish the same to be rafted at said boom, they shall give notice in writing to said corporation of their intention on or before the 1st day of March, in each year, describing the kind of lumber and its quantity as near as may be, together with the marks thereon, and the corporation upon the receipt of such notice shall be compelled to take up and turn all such lumber through their booms as fast as the owners of such lumber may desire, and no faster, provided at all times that no lumber of any description shall be stopped except upon the written request of the owner or owners of the same, and no toll or expense shall accrue to any lumber designed to be run or driven to any points below Lock Haven, a full and unobstructed passage shall at all times be kept open so that the navigation of the river shall be as free as it now is."

9. That in pursuance of the rights and privileges granted to said corporation, Defendant, by said Act of Incorporation it did within a short time after its incorporation erect in the West Branch of the Susquehanna River, at Lock Haven, a boom or booms with piers, for the purpose of stopping and securing such logs and masts, spars, and other lumber floating upon said river, as the owner or owners thereof should desire, by their written request to the said corporation, Defendant, to be so stopped and secured for the purpose of manufacturing the same at their mills

in Lock Haven, and the said Defendant did extend its said boom half way across the said river, and did maintain its said boom so constructed until the year 1875.

10. That the said boom or booms of the corporation, Defendant, are located in said river about 22 miles above the city of Williamsport, aforesaid, and all logs, masts, spars, and other lumber belonging to Plaintiffs, and designed by them to be floated and driven upon the said river from their lumber lands to the Susquehanna Boom at Williamsport, must pass by the said boom or booms of the said Defendant.

10. That in the year 1876, the said corporation, Defendant, erected and maintained during the season of floating logs, a wing or sheer-boom extending from the north side of said river half way across the same, and above the upper pier of their boom as previously maintained, as represented in the plot or map attached to the Bill filed in this case, by which said device the said Defendant extended its booms entirely across the said river and turned *all* logs, masts, spars, and other lumber floating upon said river into their said boom at Lock Haven, and thereby preventing the safe passage of rafts, boats, logs, masts, spars, and other lumber, which said structure or sheer-boom, is wholly unauthorized by the provisions of the charter of the said corporation, Defendant, is in direct violation of the provisions of their charter, and is an infringement of the rights of said Susquehanna Boom Company, and of the rights of Plaintiffs who desire to have their logs driven and floated into the boom of said Susquehanna Boom Company.

12. That said Company, Defendant, have erected and hung, and deponents are informed and believe, intend to maintain during the present year the same or a like wing or sheer boom on the north side of said river for the purpose of stopping in its said boom *all* logs, masts, spars, and other lumber whatsoever, floating upon said river in defiance of the provisions contained in its said charter. "That a free and unobstructed passage shall at all times be kept, open so that the navigation of the river shall be as free as it now is," and in defiance of the rights of Plaintiffs.

13. That by means of said structure complained of, the said corporation, Defendant, stopped and secured during the season of 1876, a large amount of logs, belonging to some of the Plaintiffs and others, owners of saw-mills located at or near Williamsport, and designed by Plaintiffs and others, owners as aforesaid, to be driven and floated from their timber lands down the said West Branch of the Susquehanna River, and into the said Susquehanna Boom at Williamsport, by which detention, Plaintiffs suffered great loss and damage.

14. That the continued maintainance of the said structure during the present lumbering season as contemplated by the said Defendant, will cause great delay and serious damage to Plaintiffs and others engaged in the lumbering business at Williamsport, aforesaid; that logs can only be floated and driven upon said river during times of high water, and almost the entire quantity of logs placed in said stream and its tributaries are driven during the spring freshets, and logs stopped and secured in the boom of the Company, Defendant, cannot be passed through said booms and delivered to the owners thereof, except in the regular course of rafting, extending through the entire summer, and by this delay, Plaintiffs will be prevented from manufacturing their logs and other lumber, so stopped by the said Defendant at their mills, and from selling the next succeeding season; that if the said Defendant be permitted to maintain its booms as at present constructed and as contemplated, Plaintiffs will suffer great and irreparable loss and damage from the stoppage of logs and other lumber, placed in said stream to be floated and driven to the Susquehanna Boom; and from the illegal acts of the said Defendant, as above set forth in defiance of the rights of Plaintiffs.

15. That deponents are informed and say that Plaintiffs, have not requested the said West Branch Boom Company in writing or otherwise, to stop any of their said logs; and that they have caused to be cut and placed in the said river and its tributaries, a larger quantity of logs, masts, spars, or other lumber which they desire to have driven and floated during the freshets of this spring down said river and into the said booms of the

Susquehanna Boom Company, and would so drive them but for the above described illegal and unauthorized structure of the said Defendant.

JOHN G. READING,
P. HERDIC.

Sworn and subscribed before me this 24th day of March, 1877.

Witness my hand and notarial seal,

[SEAL.]

JOHN A. GLENN,
Notary Public.

SUPREME COURT OF PENNSYLVANIA,

EASTERN DISTRICT.

ss.

THE COMMONWEALTH OF PENNSYLVANIA,

GREETING:

To The West Branch Boom Company.

Whereas, The Susquehanna Boom Company, *et al.* lately, that is to say, in the Term of January, 1877, No. 1, exhibited their Bill of Complaint before the Honorable the Justices of the Supreme Court of Pennsylvania, as aforesaid, asking relief touching the matters therein particularly complained of and at length set forth.

Wherefore, by the consideration of the Court aforesaid, WE COMMAND YOU, The West Branch Boom Company, your officers, agents, and employees be restrained from erecting, having, and maintaining the said wing or sheer-boom on the North side of the said West Branch of the Susquehanna River (said wing or sheer-boom, being fully described in the above mentioned Bill) and from stopping lumber, of any description, except upon the written request of the owner or owners of the same, and from obstructing the passage of said river, so that the navigation of the said river shall be as free for rafts, boats, logs, spars, masts, and other lumber, as before the erection of your said Boom, it was until the further order of said Court in the premises.

Witness the Hon. Daniel Agnew, Chief Justice of our said Supreme Court, at Philadelphia, the Twenty-seventh day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

B. E. FLETCHER, *Prothonotary.*

March 28, 1877. Served the within Injunction on the West Branch Boom Company within named by reading the same to Thomas Yardley, Secretary and Treasurer, and Joseph McGill, Boom Master of said West Branch Boom Company, and also by reading same to D. J. Chattam, an employee of said West Branch Boom Company in charge of said sheer-boom.

JOHN PIATT,

Sheriff's fees, $20. *Deputy Sheriff of Lycoming County.*

Lycoming County, ss.

Personally appeared before me Prothonotary of Lycoming County, the above named John Piatt, who, being duly sworn doth say that the above return is true and correct and the service of said Injunction was made as therein stated.

JOHN PIATT.

Sworn and subscribed before me, Agril 7, 1880.
WM. FOLLMER, *Prothonotary.*

IN THE SUPREME COURT OF PENNSYLVANIA,

EASTERN DISTRICT.

BETWEEN The Susquehanna Boom Company, H. Brown, Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Supt,, John G. Reading, Charles Bartles, John G. Reading, Executor, Augustus G. Richey, William P. Emery, Judiah Higgins and George H. Bartles, trading as Reading, Fisher & Company, Plaintiffs, AND The West Branch Boom Company, Defendant.	Of January Term, A. D., 1877. No. 1. In Equity.

THE ANSWER OF THE DEFENDANT.

The Defendant, now and at all times hereafter, saving and reserving to herself all benefit and advantage of exception which can or may be had to the many errors, uncertainties, and other imperfections in said complainants' bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this Defendant is advised is or are material or necessary for her to make answer unto, this Defendant answering saith:

1. That the facts set forth in the first paragraph of Plaintiffs' bill are true.

2. That the fact set forth in the second paragraph of Plaintiffs' bill is true.

3. That the fact stated in the third paragraph of Plaintiffs' bill is true.

4 That the facts set forth in the fourth paragraph of Plaintiffs' bill are true.

5. That, so far as respondent knows and is informed, the facts set forth in the fifth paragraph of Plaintiffs' bill are true; but, for certainty thereof, she prays the Plaintiffs may be required to make due proof thereof.

6. That as to the fact set out in the sixth paragraph of Plaintiffs' bill, that the West Branch of the River Susquehanna is by law a public highway, respondent concedes the same to be true, but as to all and every the other facts and allegations in the said section, she prays the Plaintiffs may be required to make due proof of the same.

7. That so far as the allegations contained in the seventh paragraph of Plaintiffs' bill are concerned, respondent has no certain knowledge, and prays that the Plaintiffs may be required to make due proof of the same.

8. That the matters set forth in the eighth paragraph of Plaintiffs' bill are but partially true; and, for correction thereof, may be stated as follows: The West Branch Boom Company was incorporated by an act of the General Assembly of Pennsylvania, approved the 29th day of March, A. D., 1849, wherein it is provided by the second section thereof, *inter alia*, "That the said Corporation are authorized and empowered to erect and maintain on the south side of the West Branch of the River Susquehanna, between a point opposite the mouth of Heiner's Run and the mouth of Bald Eagle Creek, such boom or booms, with piers, as may be necessary for the purpose of stopping and securing logs, masts or spars, and other lumber floating upon said river, and erect such piers, side-branches,

or sheer-booms, as may be necessary for that purpose: *Provided*, That said Boom shall not extend more than half way across said river, and be so constructed as to admit the safe passage of rafts, boats, logs, masts, spars, or other lumber, and not impede the navigation of said river and branches thereof;" and wherein it is further provided by the *seventh* section thereof, "that should any person or persons have lumber upon said river which they are desirous of driving below the limits of said booms, and do not wish the same to be rafted at said booms, they shall give notice in writing to said corporation of their intentions, on or before the first day of March in each year, describing the kind of lumber and its quantity as near as may be, together with the marks theron, and the corporation, upon receipt of such notice, shall be compelled to take up and turn all such lumber through their booms as fast as the owners of such lumber wishing to raft below said booms may desire, and no faster. * * * Provided at all times, that no lumber of any description shall be stopped, except upon the written request of the owner or owners of the same, and no toll or expense shall accrue to any lumber designed to run or to be driven to any points below Lock Haven. A free and unobstructed passage shall be kept open, so that the navigation of the river shall be free as it is now," which provisions of said act were by Act of Assembly approved the eighth day of May, A. D. 1864, "SO CONSTRUED AS THAT IT SHALL BE THE DUTY OF ALL PERSONS DESIROUS OF DRIVING LOGS BELOW SAID BOOM, TO GIVE THE NOTICE REQUIRED BY SAID SEVENTH SECTION, OTHERWISE THE SAME MAY BE STOPPED IN SAID BOOM, NOTWITHSTANDING THE PROVISO IN SAID SECTION."

9. That the statements made in the ninth section of Plaintiffs' bill are inaccurate and incomplete, and for correction may be stated as follows: That in pursuance of the rights and privileges granted to the West Branch Boom Company, said corporation did, in the year one thousand eight hundred and forty-nine, THE SAME YEAR AND AT THE SAME TIME THE SUSQUEHANNA BOOM WAS BEING ERECTED AT WILLIAMSPORT, erect in the West Branch of the Susquehanna River, at Lock Haven, a boom for the purpose of stopping and securing logs, &c., and did erect and construct such piers and sheer-boom as were necessary for the purpose of so stop-

ping and securing said logs, &c., &c., which piers and sheer-boom the said corporation has maintained and used in about the same position and manner up to the present time.

10. That the fact set forth in the tenth paragraph are true, except as to the immaterial fact of distance.

11. This respondent denies the statements contained in the eleventh paragraph of said Bill, and avers that from about the time of the erection of her said main-boom, she has constantly, year after year, used a sheer-boom extended from the north side of said river, where of necessity it must be located, the lower extremity of which is and always has been not less than 400 feet distant from the upper pier of her said boom; that the sheer first erected and used, and the one in use at the time of the service of this injunction, was substantially the same as used in the year 1876; that in the year 1873 the said sheer-boom was improved so as to make it more manageable—more easily controlled—and so that it could more readily and quickly be extended into the stream or be withdrawn and moored along the shore; the said change or improvement being the use of wings consisting of floating planks attached to the timbers of the said sheer-boom by hinges on the lower side thereof, which are controlled by windlass and chain so that the sheer may be set at any desired angle from the shore and withdrawn promptly on the approach of any rafts, boats, logs, masts, spars, or other lumber destined for points below; that the Defendant maintained and used her boom in the year 1876 exactly as she had previously done; that she did not extend her boom (as charged) entirely across the river and turn all logs, &c.; into the same, thereby preventing the safe passage of rafts, boats, logs, &c.; said Defendant further avers that said sheer was erected and has ever since been maintained as contempla ed, authorized and required by the said act of incorporation of the West Branch Boom Company and the several suplements thereto; and she joins issue with the parties Plaintiffs as to their averment that "said structure is not only wholly unauthorized by the provisions of the charter, of said corporation Defendant, but is in direct violation of the provision of their charter, and is further an infringment of the rights of the Susquehanna Boom Co. and the rights of her co-complainants."

12. The defendant has hung, and intends to maintain, subject to the preliminary injunction of this honorable Court, during

the present year, the same sheer-boom on the north side of said river, for the purpose of stopping and securing such logs and other lumber as is destined for said boom; but the said Defendant emphatically denies that she intends to maintain and use the same for the purpose of stopping or securing in her said boom *all* logs, masts, spars, and other lumber, it being her intention and purpose to stop and secure Lock Haven logs only. The said Defendant avers in this connection, that all Boom Companies on the Susquehanna River must, and do of necessity, place their sheer-boom on the opposite shore from the main boom, and that the sheer-boom of the West Branch Boom Company should be so erected and maintained, was the true intent and meaning of the act of incorporation of the said company, and said Defendant is advised and believes that she is by law authorized to erect and maintain said sheer-boom, and that when she did erect the same, she believed, and still believes, she was in the exercise of her corporate rights.

13. The statements contained in the thirteenth paragraph are denied by the Defendant, and she craves that the Plaintiffs may be put to the proof of the same.

14. The statements contained in the fourteenth paragraph are denied by the Defendant, the same being as therein connected and stated untrue, and she desires that the Plaintiffs may be required to prove the same.

15. The statements contained in the fifteenth paragraph of Plaintiffs' bill, to wit: that H. Brown, Charles Hebard, James N. Brown, B. C. Bowman & Co., Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Reading, Fisher & Co., have not requested the said West Branch Boom Company, in writing or otherwise, to stop any of their said logs, is true; but as to whether they, or either of them, have placed in said river and its tributaries a large quantity of logs, masts, spars, or other lumber, which they desire to have driven down said river and into said boom of the Susquehanna Boom Company, the said Defendant knows not; but certain it is, that if it be true that they, or either

of the said Plaintiffs, have such stock in the river, it is not true that they have refrained from driving the same, or have been deterred or hindered in any manner by the sheer-boom of the West Branch Boom Company.

16. The West Branch Boom Company, Defendant, further saith: that under and by virtue of the provisions of an act entitled "An Act relating to the West Branch Boom Company," approved the 18th day of March, 1869, extending the act of 28th April, 1864, to the said West Branch Boom, the said Company was and is authorized "to extend their said booms up the Susquehanna River from time to time and at such points or places on said stream AS THE COMPANY SHALL DETERMINE THE PUBLIC INTEREST REQUIRES; that the legal effect of said act is to repeal the alleged limitation or restriction, if any be contained in the charter of said corporation Defendant, and to authorize said corporation to use such "POINTS OR PLACES ON SAID STREAM," or either or both shores thereof, as may be necessary for the purpose of stopping and securing the logs and other lumber destined for said The West Branch Boom: "Provided THAT SAID BOOMS BE SO CONSTRUCTED AS TO ADMIT THE SAFE PASSAGE OF RAFTS AND BOATS, AND NOT IMPEDE THE NAVIGATION OF SAID RIVER AND THE BRANCHES THEREOF." See Pamphlet Laws 1864, page 681, Sec. 1. That a fair and reasonable interpretation of the charter of the Defendant and the several supplements thereto, does not, as charged in the twelfth paragraph of Plaintiffs' bill, prohibit the said Defendant from erecting and maintaining a wing or sheer-boom on the north side of said river, but on the contrary, as Defendant is advised, the erection and maintenance of said sheer-boom is expressly authorized thereby.

17. That the Booms of the West Branch Boom Company are so constructed as to admit the safe passage of rafts, &c., and not impede the navigation of said river and the branches thereof.

18. That the Defendant has had a sheer-boom substantially like the present in constant use at the point at which the present

sheer-boom is located for a period exceeding twenty-one years prior to the filing of the Plaintiffs' bill.

19. That the Plaintiffs, by reason of delay and laches, are not entitled to any remedy in Equity.

20. That the Defendant has not in any manner violated the provisions of her charter and the supplements thereto, or in any wise injured, damaged or affected the property or rights of the Plaintiffs, or either of them.

Wherefore the said Corporation Defendant respectfully prays that said "Bill" be dismissed with costs.

THE WEST BRANCH BOOM COMPANY,

per S. D. BALL
and S. R. PEALE,
Solicitors for Defendant.

Clinton County, ss.

Thomas Yardley, Treasurer of the West Branch Boom Company, being duly affirmed according to law, deposes and says that the facts set forth in the above answer are true, so far as the same are personally known to him, and so far as stated upon information, he verily believes the same to be true.

THOMAS YARDLEY.

Affirmed and subscribed before me this, the 9th day of June, A. D. 1877.

GEORGE W. BATCHELER, *Prothonotary.*

IN THE SUPREME COURT OF PENNSYLVANIA.

The Susquehanna Boom Company, *et al.*	Supreme Court E. D. Pa.
vs.	In Equity
The West Branch Boom Company.	January term, 1878. No. 1.

The Plaintiffs join issue on the matters alleged in the answer.

To B. E. FLETCHER, Esq., *Prothonotary S. P.*

S. GUSTINE THOMPSON. *Pro Plaintiffs.*

Susquehanna Boom Company,	In the Supreme Court
vs.	of Pennsylvania.
West Branch Boom Company.	

It is hereby stipulated and agreed by and between the parties hereto that M. F. Elliott, Esq., Attorney and Counsellor-at-Law, of Wellsboro, Tioga County, Pennsylvania, may be appointed Examiner and Master in Chancery in the above entitled case with the usual powers of Masters in Chancery.

BENTLEY & PARKER,
Attorneys for Plaintiff.

BALL & PEALE,
Attorneys for Defendant.

February 13, 1878.

IN THE SUPREME COURT OF PENNSYLVANIA.

The Susquehanna Boom Company, H. Brown et al.	January Term,
vs.	1877.
The West Branch Boom Company.	In Equity.

And now March 18, 1878—It is ordered by the Court that an attachment be issued against Thomas Yardley, Secretary and Treasurer of the Defendants above named, as for a contempt, in disobeying the Special Injunction of this Court, heretofore granted against the use of a certain wing or sheer-boom of the said Defendants attached to the northerly shore of the West Branch of the River Susquehanna. Provided that if the said Defendants shall, forthwith and without delay, remove the said wing or sheer-boom from its position and attachment as aforesaid, and take the same into secure custody, at some proper place within their own boom, where it cannot be used surreptitiously by others, then the attachment may be returned by the Sheriff, into whose hands it shall come, without executing the same; and a full return of the facts made by him upon the writ.

BY THE COURT.

TESTIMONY AND MASTER'S REPORT.

BETWEEN The Susquehanna Boom Company, et al. Plaintiff AND The West Branch Boom Company, Defendant.	In the Supreme Court of Pennsylvania, in Equity. No. 1, January Term, 1877.

Met the parties and their solicitors at Williamsport, Pennsylvania, April 23, 1878, pursuant to notice M. F. Elliott, Examiner and Master.

PLAINTIFF'S EVIDENCE:

Act of Assembly incorporating the Susquehanna Boom Company, approved March 26, 1846.

Supplement approved March 30, 1864.

Supplement approved April 28, 1864.

Supplement approved April 4, 1864.

Supplement approved December 11, 1866.

Act of Assembly incorporating West Branch Boom Company.

Supplement to same approved May 8, 1854.

S. D. Burrows sworn:

I reside at Williamsport, Pennsylvania, it will be eleven years on the 24th of May next since I came here; I have been in the lumber business principally since I came here: have purchased my logs from Elk, Clearfield, Cameron and Cambria counties mainly; I have generally manufactured the logs into lumber at Williamsport: brought them to Williamsport by the West Branch of the Susquehanna River; I have manufactured from three to twenty million feet a year. Some years we have brought them all here into the Susquehanna Boom, and some years we have run them or a portion of them from the West Branch boom down the canal to Williamsport. The West Branch boom is located at Lock Haven, in Clinton county. Some years I have seen thirty million feet of logs in the West Branch boom, and other years there would not be more than seven or eight million feet in it when full: on two or three occasions the logs belonging to me were stopped in the West Branch boom by my direction, but not by orders given before the first day of March.

Q. State whether at any time you gave notice in writing to the West Branch Boom Company before the first of March to stop your logs at that boom?

A. I think not.

I think I am acquainted with the structure of the West Branch boom; it is constructed on the south side of the river; I should think the structure of the boom occupies about one-half of the stream; I know that there was a sheer-boom there some twelve or fourteen years ago, erected to turn the logs into the boom; don't know of any such above the boom—(draft attached to the bill in this case shown witness)—If the representation on the draft, of the river, the boom and sheer-boom is correct, the sheer-boom would undoubtedly guide all logs into the boom unless there was a strong west wind. The

draft does not seem to correctly represent the river, boom, etc.; it does not show the curves in the river which I think are there; the piers are not, in fact, in a straight line as they appear to be by the draft; it would not make any difference whether the piers were in line or not as to effect of driving the logs into the boom. The lumbermen generally put their logs into the stream in the winter and stamp them with their own mark, which is registered in the two boom offices; the logs intended to be stopped at Lock Haven require no notice to stop them; logs intended for Susquehanna boom are passed through the West Branch boom to a large extent; notice is served on the offices of West Branch Boom Company before first of March of the probable amount the person giving such notice has in the river, and that he desires the same to be passed through the Lock Haven boom. The logs are run down the river by men in times of floods in the river; some are driven by private parties, but the majority of them are driven by a corporation, known as the Bennetts Branch Improvement Company. This corporation drives with a force of from one hundred to one hundred and fifty men. It is not practicable for the different owners to keep their logs separate in driving them.

The effect of a sheer boom as laid down on draft in the bill in this case, would be to drive all persons' logs promiscuously into the West Branch Boom. After the logs are driven into the West Branch Boom the way to get them out, is, for the Boom Company to turn the logs by, which were not intended for that boom. Logs intended for the Susquehanna Boom would be found after being driven into the West Branch Boom mixed with the other logs from one end of the boom to the other. It might take a week and it might take three months to raft out of the West Branch Boom, logs intended for the Susquehanna Boom.

Since the Pocket Boom has been built at the West Branch Boom they have been enabled to clear their boom, sometimes twice and sometimes once during a flood. Thirty million feet of logs do not go into West Branch Boom unless on a very high flood. When that quantity does go in, I think it takes four weeks to raft them out. I have never known a flood in the stream which lasted four weeks."

The logs destined for the Susquehanna Boom, left in the West Branch Boom until after the flood is over, would either lay along the river or be brought down the canal after they were passed out of the West Branch Boom. The foot of the West Branch Boom is about a half a mile above the dam across the river at Lock Haven.

The logs intended for the Susquehanna Boom, when turned out of West Branch Boom are not rafted up, but turned out singly. They float over Lock Haven dam when there is high water. Nearly every year since I have known the river, logs have gone over the dam at Lock Haven and laid along the river between that point and the Susquehanna Boom after being turned out of West Branch Boom. The delivery of such logs into Susquehanna Boom depends upon subsequent floods in Susquehanna River. After the logs have passed over the dam they cannot practically be taken to Susquehanna Boom by canal. I have known logs rafted out of West Branch Boom and which had passed over the dam remain in the river three months. I have known them to be hauled out of the stream in the fall to save them.

Cross-Examined by S. D. Ball for Defendant:

I have been in the lumber business in Pennsylvania as an operator nineteen years; I was engaged in the lumber business in the State of Maine before I came here; I have been acquainted with the workings of booms since the second year after the West Branch Boom was built; a sheer-boom is constructed for the purpose of turning logs into the main boom, which would float outside and past the main boom were it not for the sheer-boom; it will not serve that purpose if hung on the same side of the river where the main boom is placed; if a sheer-boom is used in connection with the West Branch Boom, it must be hung on the north side of the river of course; I should say the capacity of the Susquehanna Boom is from sixty to two hundred million feet; I think when the floods are equal, at Lock Haven and Williamsport, the proportion the booms would hold would be as thirty to two hundred.

They get out of the Susquehanna Boom from seven to ten

million feet per week ; a log owner would generally have his logs scattered all through the Susquehanna Boom the same as at West Branch Boom.

Logs taken from West Branch Boom through the canal to Williamsport might be received by the owner at his mill at Williamsport as soon as they would be rafted out of the Susquehanna Boom. As long as I did get my logs from West Branch Boom by way of canal, it cost me but a few cents more than the boomage at the Susquehanna Boom.

I never saw the sheer-boom as represented on the draft in Plaintiff's bill. My experience with West Branch Boom, is, that when I have given notice to the persons in charge of that boom, that I desired my logs to be passed out, of, and on, past that boom is, that they have been passed out without charge. In times of high water when logs are floating down the river in large quantities, it would not be practicable to separate the Lock Haven logs from the Williamsport logs at or near the West Branch Boom. If logs designed for the Susquehanna Boom are turned into West Branch Boom, the only practical way to get them out is to raft them out at the foot of the boom. If no sheer-boom is used to turn the logs into West Branch Boom at all, there would necessarily be a great many Williamsport logs run into that boom at Lock Haven, and the only way of getting them out is as stated before. It does not make any difference about logs lodging, whether they are turned into West Branch Boom or not, provided they are turned out so as to run on same stage of water as those not turned in. All logs between Lock Haven and Williamsport have to be driven into the Susquehanna Boom or come in on a natural flood. Logs are frequently driven into the Susquehanna Boom after passing Lock Haven. Logs are frequently hauled out of the river after driving season closes above both booms. Without floods, logs cannot be got into the boom, and without industry even though the floods be good, logs will not be got in.

Re-direct by J. W. Maynard :

When I got my logs from the West Branch Boom down the

canal, I did not pay the Susquehanna Boom Company any boomage.

April 25th, 1878.

George S. Bangor, called and affirmed for Plaintiffs:

Q. Where do you reside?

A. In the city of Williamsport.

Q. How long have you resided here?

A. Twenty-five years, nearly.

Q. State whether you are an officer of the Susquehanna Boom Company?

A. Yes sir; I am.

Q. In what capacity?

A. I have occupied the position of acting Secretary and Treasurer.

Q. For what length of time?

A. Sixteen years.

Q. Can you state in general terms and within the boundary, the cost of the Susquehanna Boom— a low estimate; a moderate estimate?

A. The actual expenditures, I think, will exceed one million and a quarter dollars, ($1,250,000.) It was that some two years ago. It has been increased, somewhat, since.

Q. State in general terms, what is the annual cost of keeping up the structure; make it low?

Q. It will run from forty thousand to two hundred and forty thousand dollars. Those are the limits.

Q. Per annum?

A. Per annum; yes sir. In 1867 it exceeded $240,000.

Q. State in general terms the quantity of logs that have come to the boom for a series of years, of course they have varied; state the range?

A. Within the last ten years it will run from, probably, seventy millions to two hundred and thirty millions.

Q. Are you acquainted with the location and structure of the West Branch Boom?

A. Yes sir; I have a partial knowledge.

Q. Located where?

A. Located a short distance above the city of Lock Haven. I suppose some twenty-four or five miles from Williamsport—twenty-five miles above here—about, I suppose.

Q. State your knowledge of the fact of logs, destined for the Susquehanna boom, and registered in the office of the Susquehanna Boom Company, that have annually, for a series of years been detained, if that is the fact, at the West Branch Boom. Make a general statement, as before, not expecting entire accuracy, but within the range or limit. How many have been detained for a long or shorter period, of logs destined for the Susquehanna Boom and registered in the office of the Company?

A. I have no means of fixing any limit. I know that there has been a large amount every year, of logs destined for our boom that have been detained at the West Branch Boom, at Lock Haven; but we have no means of ascertaining the quantity. Some years it has been very large. In 1867 it was estimated that there were some sixty millions.

Defendant's counsel objected to estimates, unless the witness states from his personal knowledge.

A. I cannot give you any information as to the quantity. I can say this: that by the official report of the Canal Company—

Plaintiff's counsel—That might be good if in a different shape. You are not an officer of the company.

Q. What has been the delay—what length of time frequently —of the logs there. How long delayed before they reach this boom?

A. It frequently happens, that they are delayed during the entire season. They are caught in that boom on the first floods, the early floods, and not infrequently remain in the river until fall before we get them into the boom. That is, a large portion of them.

Q. State what you know of the practice of bringing logs from Lock Haven down the canal to the mills at Williamsport?

A. I know there is such an arrangement.

Q. State whether it has been the practice for a number of years, to such extent as you may know; speaking within the range?

A. It has been the annual practice for a series years; more largely entered into the last two or three years—with the last two years than previously. We had a person count the logs last year, in the employ of our company, and we make it about fifty millions.

Defendant's counsel objects to any but personal knowledge.

Q. State from your own knowledge whether there are many millions.

A. From my own knowledge, I know there are a number of millions.

Q. And so annually?

A. Yes sir; that is, within the last two years.

Q. Does the Susquehanna Boom Company receive any toll for logs brought down the canal?

A. No sir.

Q. Have you any personal knowledge of the sheer-boom, that has been put in, in connection with the West Branch Boom, within the last three years?

A. Yes sir; I have some personal knowledge.

Q. State whether you have seen it?

A. I have.

Q. Where is it located, and how?

A. The wing or sheer-boom, is attached to an abutment or pier on the north side of the river, some eight hundred feet above the head crib to the boom. I think some eight hundred feet above the upper pier or head of the boom. It is suspended to an abutment on the north shore, and is constructed with a series of wings which enables them to throw it out into the stream, and when, extended to its full length, it overlaps the crib at the head of the boom; so that logs coming down the river, striking this wing boom, are diverted from their course into the boom, that is the effect of it. Did I say "eight hundred feet? I think that is an error. I made a measurement and have the figures here. It is a little over eight hundred feet. I am speaking of the distance from a line directly opposite the upper pier, following the shore, to this abutment. I have it here—eight hundred and fifty-six feet (856).

The diagram attached to the bill in this case, shown witness.

Q. Please examine this diagram and state whether or not, that is a representation of the situation of the West Branch Boom?

A. It is a tolerably good representation. It gives a good general idea. It is not strictly accurate. It represents the position of that wing boom very well.

Q. Is that a tolerably correct representation of the sheer and upper pier of the boom?

A. Yes sir; I should say so. The proportions are not good; but it represents the location of the boom, and the manner of its construction, and how it is operated, and it is a very fair representation.

Q. You may state, if you please, how that boom is operated What keeps it in the position in which it apparently is in the stream as represented in the draft?

A. It is regulated entirely by the action of the current against the wings. Those wings are moveable and can be thrown

out by the action of a windlass to a line at right angles with the main timbers, or at any diagonal angle. Then the action of the current upon the wings regulates its position in the river, by throwing out the wings at a right angle—they can extend it to its full extent; as far as it will go, by drawing those wings back it has a tendency to draw the wings in toward the shore.

Q. State if those wings are called piers?

A. Yes sir.

Q. Hung by hinge or flexible?

A. Attached by hinge to the main timbers of the boom.

Q. It is held in its position by the force of the stream against the wings or piers?

A. Yes sir.

Q. State now what is the inevitable result upon logs that are floating in the stream, when the sheer-boom is hung as represented in the draft?

A. I should say the inevitable result would be to throw any logs or pieces of timber, coming down the river, into the boom. They cannot get by; it is impossible. There it is only one circumstance that would enable the logs to pass, that is a strong wind blowing from a certain direction. It might force the logs into the open space. The action of the current and the way it draws, and the course of the stream, all have a tendency to throw the logs to the south side, and then with the assistance of this boom they cannot get by; it is impossible.

Q. Can you state when this boom was put in—this sheer—how many years ago?

A. I should say about 1873 or 1874; so far as I know.

Q. Prior to that time, state whether logs came down in the other part of the stream and come to the Susquehanna Boom without passing through the West Branch Boom?

A. Do you mean ALL logs?

Q. I mean large quantities?

A. A much larger proportion came down.

Q. What has been the comparative difference, within a reasonable range, since the structure has been put in?

A. I do not know. It has been largely increased; double the quantity. Some seasons the boom has taken up all the logs, none have escaped. That was the case last year, on a little flood that brought in a quantity of logs, every one of them was thrown into the boom.

Q. As a means of approximating the inconvenience and damage, if any, that the Susquehanna Boom has sustained, I will ask a question, which cannot, of course, be accurately defined by you or anyone else, because it will depend upon contingencies that remain outside of any direct question that can be asked, but I will ask it for the purpose of showing whether it has been a damage, and approximating the extent of it. In the first place, I ask the question, whether the structure, called the sheer-boom, in its effect, has beem a damage, or injury to the Susquehanna Boom Company?

Defendant's counsel objects: That the question involves the opinion of the witness as to a question of law raised by the pleadings—bill and answer.

A. We have regarded it as a very serious injury—damage.

Q. State whether you know that of your own knowledge?

A. Yes sir; I speak from knowledge in answering that question.

Q. State now, if you please, to what extent (within such reasonable range as you may know to be true) say annually?

A. I should say, probably, from twenty to sixty thousand

dollars, according to our means of calculating. I think it has exceeded sixty thousand dollars some years.

Cross-Examined by S. D. Ball, of counsel for Defendants:

Q. After the logs leave the West Branch Boom, is there any difficulty in their being brought into the Susquehanna Boom except want of water?

A. That is the principal difficulty.

Q. The West Branch Boom Company have exerted no means to prevent their coming—within your own knowledge—after they leave their boom?

A. Not after they leave the boom. The detention there is the main thing. After they have passed their boom they are still detained in their harbor.

Q. By what means?

A. After they have been turned through your boom they are still detained in your harbor, by an arrangement certainly made with parties who have contracted to deliver those logs by canal. The Boom Company may not be responsible.

Q. I want to see whether the West Branch Boom Company, or officers, in any way detain logs after they leave the boom?

A. I can say what is done—what is practiced. Who is responsible I cannot say.

Q. You cannot say the West Branch Boom Company?

A. No sir. I know they are interested in the business; interested in the receipts of bringing those logs to Williamsport; directly and personally interested.

Q. Explain how you know that?

A. I was told by Mr. Yardley, or by some of the officers of the Company, that they draw from the Canal Company two (2) cents on every log brought down the canal.

Q. That the West Branch Boom Company does?

A. Yes sir. Others; quite a number have told me so.

Q. Others connected with the West Boom Company?

A. No sir, not officially.

Q. Who pays this two cents?

A. It is paid by the Canal Company.

Q. To the West Branch Boom Company.

A. To the West Branch Boom Company, or in other words, the toll has been nine cents on every log brought from Lock Haven to Williamsport. The Canal Company retain seven cents and refund two cents to the Boom Company. That I have been informed is the practice.

Q. All you know of that as regards the West Branch Boom Company, is what you heard from Yardley, the Secretary and Treasurer?

A. I say others.

Q. But others not connected with the Boom Company?

A. No sir.

Q. So that your only information from any officer of the Boom Company, was from Mr. Yardley?

A. That is all.

Q. Where are the logs taken by the parties owning them here—after they pass the dam—where are they taken to be put in the canal?

By Mr. Maynard;—You spoke of the logs being detained; state if they are detained all along the river?

A. This detention I have referred to, is above the dam.

After they pass the dam, of course the company have no control. The logs either come through or lodge on the shores or bars.

By Mr. S. D. Ball:—I asked you the question, where the logs were taken by the parties, after they passed the dam; where they are rafted together?

A. There is a harbor below the dam, where the logs are caught and detained, as I understand, and they are re-rafted from that harbor and made up into fleets. I do not speak from personal knowledge, but in general way. I have seen those logs there in large quantities.

Q. State, if you please, the distance between the upper pier of the West Branch Boom and the lower end of the sheer-boom when hung, as near as you can tell?

A. That is the space.

Q. The space between the upper pier of the boom and the lower end of the sheer-boom?

A. We had no way of measuring that. When we took the measurements, the wing boom was out in the river, consequently, we could not measure that space. Take the measurement of the boom and take the measurement between the abutments and a point opposite the upper crib, and from that you can estimate or approximate the space. The wing boom measures 540 feet, and the space as I told you, between the abutment and the upper crib is 856 feet. If that boom hung directly along the shore and not suspended in the stream, it would make a difference of 316 feet between the lower end of the boom and that upper crib—the sheer-boom—but, being extended out in the river, it would increase the opening there.

Q. Is the map correct in showing the distance?

A. No; I told you I thought it was not accurate. I should suppose the space was about 400 feet.

Q. Nearly as much space there is length in the sheer-boom?

A. The sheer-boom measures 540 feet.

Q. You have told us the damage, in your opinion, that has been suffered by the Susquehanna Boom in consequence of the hanging of this sheer-boom, annually. Please give us the items by which you make up your estimate of damages. How do you get at the $60,000. I mean in consequence of the hanging of the sheer-boom?

A. I did not make up any answer to conform to that at all. I do not know anything about it.

Q. Then, what damage do you speak of, when you speak of this fifty or sixty thousand dollars. What damages do you speak of?

A. I had reference to the quantity of logs that were brought to parties here, in Williamsport, in some other way than through our boom.

Q. You mean through the canal?

A. Yes sir.

Q. You count, then, the loss of tolls on logs that came through the canal as damage?

A. It takes so much from our revenue.

Q. That is the way you make up the damage?

A. Yes sir.

Q. In your estimate, then, of damage, if I understand you, you contemplate or claim, that no man has a right to bring his logs from Lock Haven or above there through the canal to this place. Is that the way you fix the responsibility; you assume that those logs, the Susquehanna Boom Company have a right to toll upon?

A. I think their act of incorporation would undoubtedly give them the right to collect tolls on those logs.

Re-direct Examination.

Q. State whether the damage is sustained, and has been constantly, by the Susquehanna Boom Company, in consequence of logs having been caught in the West Branch Boom, turned through the boom, floated over the dam, and being left in the stream in consequence of the floods falling—not being able to take them through in consequence of the detention at the West Branch Boom—and laying in the stream from that time until fall; sometimes to be hauled out in the winter; whether the Susquehanna Boom Company has suffered damage in consequence of that fact?

A. I should say they had. I can give you the actual cost for the last two or three years. It cost the Boom Company $3,500 last year to bring those logs into the boom from various points along the river between the two booms; and two years before that it cost us over $7,000, that is, the drives.

Q. Other years back of that, did it cost something?

A. Every year; there is not a season but what the expense is more or less.

Q. And that expense, or items of expense formed part of the general estimate of damages as given by you?

A. It did not; I had not that in contemplation at that time. Of course, that is another damage; it would increase the amount; we try to get a portion of that back, but we do not often succeed.

Q. You may explain how you try to get it back?

A. By dividing the expense *pro rata* among the parties who had logs in the drive; trying to collect their proportion, but it is very rare that they will pay it. I do not suppose we have collected one-fifth of the expense of that drive from the owners of the logs. The difficulty is just here: a great many logs are sold deliverable in our boom. Parties have purchased logs at boom scale, and they claim they have nothing to do with any expense

of bringing logs into the boom, and in consequence, they refuse to pay any proportion of the expense.

Re-Cross-Examination :

Q. Is the damage thus occasioned annually, caused by the hanging of the sheer-boom on the West Branch Boom or not?

A. Not entirely so ; the operation of that boom has something to do with that result, but not entirely so. A large proportion of logs would come by, if the river was unobstructed, and those logs would often come in on the flood without being detained. But the fact of logs being thrown into the boom and passsd through and out only after the water is down, of course would have a certain effect.

Q. From the shape of the West Branch Boom and the current there, what proportion of logs would run into the Lock Haven Boom without a sheer-boom?

A. It would depend upon the quantity of logs in the river.

Q. What proportion passing down?

A. If the river was "bank full," as we call it, why, probably, one-half of those logs would pass the boom. If the logs were running thin, the majority of them would go into the boom without the assistance of the wing; or a strong wind blowing from the southwest, if the logs were running thin, would drive a good many past.

Q. Then the logs that run into the boom without a sheer-boom would be detained in the same way, and pass from the limits just the same as though the sheer-boom had been hung?

A. Yes sir.

Q. Is the Susquehanna Boom Company required to drive those logs between the West Branch Boom, or the dam between it and this boom, or do they do it of their own accord?

A. It is a voluntary act.

Q. You spoke of $3,500 as the actual expense incurred by this boom, in getting logs in this last year?

A. $3,500.

Q. When was that expense incurred; within what time?

A. That was incurred between the 4th of October and the 15th of October and the 15th of December, 15th or 20th of December last. We made three drives—the Boom Company did. There were four drives—three were made within the time I have stated; the fourth drive was an independent drive, and was made afterwards.

Q. This you included as part of the damage to the Susquehanna Boom—this expense?

A. I told him, that when I gave the damage, I did not contemplate that expenditure as a portion of it, but, it does, of course, increase the amount, I should think.

B. C. BOWMAN, sworn for Plaintiffs:

Q. Where do you reside?

A. At Williamsport.

Q. How long have you resided here?

A. Fourteen years, about.

Q. Are you engaged in the lumbering business?

A. I am.

Q. And for what length of time.

A. I have been engaged in the lumbering business thirty-six years.

Q. What length of time here?

A. Fourteen years; a little longer than that. I had something to do with lumbering here before I resided here. I have been in the lumbering business here, about eighteen years.

Q. Where are you engaged in the business here—at Williamsport?

A. Yes sir.

Q. In what manner engaged?

A. Manufacturing lumber.

Q. Where do you get your logs?

A. Get them up the river; on the Susquehanna mostly.

Q. That is above the West Branch Boom?

A. Yes sir.

Q. You know the location of the West Branch Boom?

A. I do.

Q. Have you been there, at the boom and on the structure or portions of it?

A. Yes sir.

Q. Have you seen this sheer-boom, that is said to have been put in on the north side of the river, above the upper pier?

A. I have.

Q. When were you there, for the first and last time?

A. The last time I saw the sheer—and I was going to say, only time— I saw it last month; in the fore part; in March, at the time of our first run of logs.

Q. Was it hung?

A. It was.

Q. What was its position in the stream, and its effect?

A. It was out, so as to turn logs into the boom.

Q. State whether the effect was to turn all the logs in, and whether it did so?

A. At the time I saw it, logs were running quite thick, and I should say, that about all ran into the boom—nearly all.

Q. State whether or not, they would have come past, portions of them, and what proportion, if there had been no sheer-boom there?

A. A large proportion of them would have come past at that time. I cannot say what proportion, but a great many of them would have come past if the sheer-boom had not been out.

Q. State whether or not, in your judgment, the sheer-boom occasions serious damage and injury to the Susqnehanna Boom Company?

Counsel for Defendant objects: The question involves the opinion of the witness as to the law of this case.

A. It prevents a larne proportion of the logs from coming directly through. When logs are running, and there is water enough to bring them through, that sheer-boom stops them and prevents them coming through directly.

Q. State what becomes of the logs so detained?

A. They are turned out of the boom; and some are brought down the canal, and others left in the river to come when there is water enough to bring them.

Q. On those that are brought down the canal, is there any toll to the Susquehanna Boom Company?

A. No sir.

Q. And those that are floated over the dam and left in the stream, not brought down, is there or not any expence attached to

getting them down and delay?

A. There is expense and delay.

Q. Annually?

A. Annually.

Q. Do you know the extent of the cost or damage sustained by the Boom Company in consequence of the delay?

A. No sir; I do not. I do not know the expense they incurred in driving.

Cross-examined:

Q. Would there not be the expense incident to driving, between the West Branch Boom and the Susquehanna Boom if there was no boom at all—would not the river have to be "driven" for the logs on it between those two points?

A. The logs would have to be driven by some one, but they are driven more readily and at less expense when there is plenty of water. If detained until the water gets low and turned out through the course of the season, it is necessary to make more "drives."

Q. Does not that depend very much upon the floods that follow. Suppose there is a large flood, would it not sweep everything before it without a drive?

A. Yes sir.

Re-direct-Examination:

Q. A question further:—In further explanation of your answer to the last question put by counsel on the part of the defendants, state, Mr. Bowman, if there was no boom at Lock Haven, whether the "crew" engaged in the "drive" would follow the logs right up until they landed them in the Susquehanna Boom—if the drive was not suspended, and the drivers at Lock Haven?

A. When the drives come in they leave what is in the Lock

Haven Boom, and make a clean drive from thereto Williamsport.

Q. If there was no boom there?

A. If there was no boom there, they would fetch the whole thing right in—there would be none left.

Q. When the stage of water is sufficient to bring the logs so far as the West Branch Boom—if there was no boom—is not the stage sufficient to bring them from that point to the Susquehanna Boom?

A. You can always "drive" to Williamsport when you can "drive" to Lock Haven.

Re-Cross-Examination:

Q. Then, if I understand you, the only way to prevent this detention of logs, is to "wipe out" the West Branch Boom altogether?

A. Yes sir; the only way to prevent that detention, is to keep them from running into the West Branch Boom.

Re-direct Examination:

Q. That I suppose, has reference only to that portion of the logs that are caught in the West Branch Boom. Those that are not caught there without a sheer-boom, and that come past, would come to the Susquehanna Boom?

Yes sir.

Re-Cross-Examination:

Q. Would not a large portion of the logs run into the West Branch Boom without the use of the sheer-boom?

A. I suppose they would, naturally—take it one time with another—the largest half would run into the West Branch Boom until it was full.

Q. Those that run in that way would be detained?

A. Yes sir.

THOMAS TURLEY, sworn for Plaintiff.

Q. Where do you live?

A. Williamsport.

Q. How long have you lived here?

A. I have been here twenty-three years; lived fourteen years in Williamsport, and the balance on the other side of the river, at the boom?

Q. What has been your occupation or business for the last fourteen or fifteen years?

A. Booming for the last twenty-three years. The first day's work I did on the boom was twenty-three years ago.

Q. Been in the employ of the Boom Company ever since on the boom?

A. Yes sir, except about five months.

Q. What, in general terms composes your duties?

A. Well, repairing and superintending the boom; keeping it in order and building.

Q. Are you acquainted with the West Branch Boom and structures?

A. I am; some, yes sir.

Q. Been there frequently?

A. Have been on it several times.

Q. Have you seen the sheer-boom that is on the north-shore, above the upper pier of the boom?

A. Yes, sir; I have been on it.

Q. When were you on it first?

A. Pretty near two years ago.

Q. Was it "hung" then—two years ago?

A. It was "hung" but was not "out;" it was in the summer time.

Q. No flood at that time?

A. No sir.

Q. Have you been there since, when there was a flood?

A. Yes sir.

Q. When?

A. I was there last November.

Q. Was it "hung" then?

A. Yes sir.

Q. What was the effect of it—what duty did it perform?

A. I was up there three or four times. Once I was up and it was not hung; twice I was up, it was hung and turning logs into the boom.

Q. State whether it turned all in that were running?

A. Yes sir.

Q. If the boom had not been hung at that time, state whether a portion of the logs would have come by?

A. Some of them would have come by; it depends a good deal on the wind. There are days when pretty much all the logs would run into the boom; other days it depends on the wind—nearly all the logs will run by. I was up there one day this spring and watched them.

Q. When there is a strong wind in a particular direction, the logs will almost all run by that boom and come here?

A. Yes sir; one day this spring, two-thirds were running by, and there was not much wind that day.

Q. The "sheer" was not "hung" that day?

A. No sir; the "sheer" was not "out" that day.

Q. Was you up there that spring, when the "sheer" was out?

A. No sir.

Q. What is the effect of catching the logs in the West Branch Boom; what becomes of them—those that are destined for the Susquehanna Boom, that are kept there?

A. A great many are caught after they come out of the boom, and rafted up and brought down the canal, and the balance come over the dam. Generally the water is too low and they cannot get through, have to lay until we get water again.

Q. How long will they generally lie?

A. That depends on the flood; sometimes we will not get any flood all summer—we had no flood at all, scarcely, last summer. I had to make three drives last summer, to get the logs in.

Q. Did you make those drives for the Boom Company.

A. Yes sir; except the last drive. The gentlemen then paid for their own marks—the Lock Haven gentlemen paid for their marks, and the Williamsport gentlemen for theirs on the last drive.

Q. That was in December?

A. In December; somewhere about the first of December.

Q. State whether or not, it is a detriment and damage to the Susquehanna Boom Company to have logs caught in the West Branch Boom, that are destined for the Susquehanna Boom?

Counsel for Defendants objects as before.

A. Yes sir; we can never drive from there until the water gets too low, and it costs a great deal more to drive in low water

than in good water; the water is generally pretty low where we have to drive.

Q. On those brought down the canal, there are no tolls received by the Company?

A. No sir.

Testimony on part of Plaintiff's closed.

Hearing adjourned.

May 28, 1878.

Met the parties according to notice, at the office of Bentley & Parker, Williamsport, Pennsylvania.

J. O. Parker appears for Plaintiff.

S. D. Ball, for Defendant.

EVIDENCE OF DEFENDANT:

GARRET TINSMAN, sworn:

I reside in Williamsport; am 69 years old. I have been engaged in the lumber business about 25 years. I have been engaged in manufacturing lumber from the log.

I am interested in a saw mill here at Williamsport; have been so interested for 25 years. For the last ten years have been getting our stock above Lock Haven. Have received a portion of our stock through the canal for the past ten years from Lock Haven. They cost us (the logs) about the same through the canal as to get them through the Susquehanna Boom. Some years we could start our mill earlier by getting our logs through the canal. The main boom at Lock Haven is constructed on the south side of the river. If a sheer-boom is used in connection with this boom, it would have to be hung on the south side of the river and swung to the north side. With a sheer-boom, such is now used at West Branch Boom, the pin to which it is hung would have to be on the north-side of the river.

Cross-examined by J. O. Parker.

Q. Why did you get your logs earlier some seasons if brought down the canal?

A. Because if rafted out of the West Branch Boom into the river we cannot get the logs over the dam below the Susquehanna Boom until the water gets down to about five and a half or six feet. We cannot catch and hold our logs until the water gets down to about that pitch. My mill is below the dam at Williamsport. The majority of saw mills in Williamsport are above the dam. The objection I have mentioned would not apply to parties getting logs to the mills above the dam.

Q. Would you have invested money in the purchase or erection of saw mill properties in Williamsport, had it not been for the facilities afforded by the Susquehanna Boom in catching your logs?

Question objected to by Defendant's Solicitor as not cross-examination and irrelevant.

A. No sir.

GEORGE W. LENTZ, sworn:

I reside in Williamsport, Pennsylvania. Am sixty years old. I am engaged and have been in the lumber business in Williamsport for the past seventeen or eighteen years. Built mill in 1869 and run it ever since. My firm stands now White, Lentz & White. We have received a portion of our stock of logs down through the canal from the Lock Haven Boom. We have brought down in that way considerable stock for some years past. We have our logs caught below West Branch Boom, rafted up into rafts and brought down the canal. We employ and pay the men who raft the logs up and bring them down the canal so much per thousand, they paying the tolls to the canal. I do not consider that the stock we have got in this way down the canal has been a damage to us. The difference in expense in getting logs to our mill in this way down the canal or through the Susquehanna Boom, would be trifling, if any. Whether we would get logs sooner or later through the canal or out of Susquehanna Boom, would depend entirely on circumstances. Logs in lower end of West Branch Boom could be obtained quicker

at Williamsport through the canal than logs in the upper end of the Susquehanna Boom, if they rafted out of Susquehanna Boom only at the lower end. The main boom at Lock Haven is constructed on the south side of the River. To make a sheer-boom effective at Lock Haven Boom, if attached to either shore, it must be attached to the north shore.

Cross-Examined by J. O. Parker.

The effect of the sheer-boom as at West Branch Boom would be to drive all logs into the boom until it was filled. Some logs would go in naturally. I do not think if logs were running thick it would be possible to use the sheer-boom so as to turn into West Branch Boom logs intended for Lock Haven and allow to go past logs intended for the Susquehanna Boom.

Q. If your logs had come through on the first floods to the Susquehanna Boom and not been stopped at Lock Haven, you would be likely to get them quicker, would you not?

A. That depends on the stage of the water. On a fine flood we could get them very quick here at Susquehanna Boom.

Q. Do you consider the location of the boom at or near Williamsport, a benefit to Williamsport lumbermen?

Question objected to by Solicitor for Defenflant as not cross-examination and irrelevant.

A. I do when kept in proper repair.

Q. Would it have been possible to have built up or maintained lumbering interests at Williamsport without the Susquehanna Boom?

Objected to for reasons to preceding question.

A. Not to so large an extent without it.

When we have logs brought down the canal, those logs pay no boomage to the Susquehanna Boom.

EDGAR MUNSON, sworn:

I reside at Williamsport, Pennsylvania. Am fifty-eight years of age. I am engaged in the lumber business here and have been nearly fourteen years. During that time I have been an owner in a saw mill here at Williamsport. I have carried on both the business of sawing logs into boards and handling rafts of square timber. I was engaged in the lumber business up the smaller streams leading into West Branch above Lock Haven. During this time I handled some lumber manufactured at the mills at Lock Haven. I have always got my stock of logs and timber above the West Branch Boom. I have got a portion of stock for my mill through the canal from Lock Haven. Have got some stock in that way for from six to ten years. I have considered it an advantage to do so. We get the logs by the canal by employing men to gather them up below the Lock Haven boom, rafting them together and running them down the canal, and we think it an advantage to get them that way because we get the logs sooner than to have them come into Susquehanna Boom. We pay the men for running our logs down the canal by the thousand feet. We pay no toll to the West Branch Boom for logs passing through it and caught up below and run down the canal. We get our logs through the West Branch Boom without the payment of tolls by notifying the officers of that company that the logs are intended for the Susquehanna Boom. The West Branch Boom is constructed on the south side of the river. If a sheer-boom is used which is suspended from the shore, it must be suspended on the north side of the river and on the opposite side of the river from the main part of the West Branch Boom. If the sheer boom was suspended above the main boom and on the south side of the river; the effect would be to prevent any logs from going into the West Branch Boom.

Cross-Examined J. O. Parker.

Q. Would you put logs into the West Branch or its tributaries without the security afforded by the booms in the river for catching and holding logs?

Solicitor for Defendant objects to this question as not cross-examination and irrelevant.

A I would not.

Q. Then you take advantage of that security without paying boomage to either company, do you?

A. I answered before that I did not pay boomage directly, and I did not know whether I did indirectly, that is all I can say.

Q. Could you pay boomage indirectly without knowing it?

A. I think I could.

Q. How?

A. By part of the money we pay for the expenses, going to the boom company affording the protection.

Q. Why would it not be equally for the advantage of all Williamsport lumbermen to have all their logs caught at Lock Haven and brought down the canal?

A. If the facilities were sufficient for bringing all the logs down the canal, I think it would be for the advantage of all lumbermen at Williamsport operating mills along the canal to have their logs brought to Williamsport that way.

Q. What is the average amount of logs rafted out of the Susquehanna Boom per year for the last ten years?

A. Probably not less than two hundred million feet.

Q. Now suppose two hundred million feet of Williamsport logs to be caught at Lock Haven in one season with the present canal facilities, would Williamsport lumbermen receive them faster than through the Susquehanna Boom.

A. I think not.

Q. Has not the Susquehanna Boom Company been chiefly instrumental in building up and maintaining the extensive lumber interest at Williamsport?

A. The manufacture of lumber would probably not have been built up had it not been for some facility of that kind.

MATHIAS EDER, sworn;

I reside in Williamsport, Pennsylvania. I have been in the lumber business on the West Branch since 1862 or 1863, up to last year. Our stock came principally from above West Branch Boom on west branch of the river. Part of our stock came through the canal from the time I commenced lumbering in 1862. I call it an advantage to get our stock through the canal. I think it costs us about the same that way as to get them out of the Susquehanna Boom. I suppose I should say that it cost us a few cents less per thousand feet to get them through the canal. We got our logs sooner if we had them brought by canal from Lock Haven to this place. The main boom at Lock Haven is on the south side of the river. I would suppose that the sheer-boom to be effective would have to be attached to the north side of the river. My firm was Eder, Housel & Deemer.

Cross-examination by J. O Parker.

Some of our logs came through to the Susquehanna Boom and some were caught at Lock Haven and brought down the canal. When I say that we got the logs down the canal quicker, I mean that we got them quicker than we would had they come down the river to the Susquehanna boom. The West Branch Boom would generally be filled up before we would get any here at Williamsport. If the logs had not stopped at West Branch Boom but come through to Williamsport on the first flood, they would be caught in Susquehanna Boom and would be in the lower end of it. Sometimes they raft out of lower end of Susquehanna Boom, and sometimes at other points—they raft out of the Susquehanna Boom at different points to accommodate the Williamsport lumbermen. They generally commence rafting out of the lower end ef the boom. It sometimes happens that the Pine Creek logs reach the Susquehanna Boom before the logs put in the river above Lock Haven reach here. If they rafted out entirely from the lower end of the boom, they would get the logs from Pine Creek too fast, and so they raft out further up the boom so as to get the logs of owners running their logs from above Lock Haven; the object being, I suppose, to supply the various lumbermen as nearly equal as possible. Cannot

tell what the effect of this sheer-boom at Lock Haven is, I have never been up since it was hung to see the effect of it. I do not think it would be any disadvantage to Williamsport lumbermen if the effect of the sheer-boom would be to turn all the logs designed for Williamsport lumbermen into the West Branch Boom. In what I have answered in relation to the advantage or disadvantage of having Williamsport logs stopped in West Branch Boom, I have spoken or intended to speak only as to my own business and our company's business. The Susquehanna Boom is an advantage to me in my own business.

ELIAS DEEMER, sworn:

I was a member of the firm of Eder, Housel & Deemer, which firm was engaged in the lumber business at Williamsport. Was in the firm six years. I heard the testimony just given by my partner, Methias Eder. His statement in relation to our business is in the main about as I look at it. The firm of Eder, Housel & Deemer is the one that is one of the Plaintiff's in the bill in this case.

May 29, 2878.

Testimony taken at Lock Haven on the part of the Defendant.

DUDLEY BLANCHARD, sworn:

I reside in Lock Haven. Am 57 years old. I came here from the State of Maine. I am a lumberman, in the cutting and manufacture of logs into lumber. Am the part owner of a mill here at Lock Haven, at which mill we cut from ten to twelve million feet of lumber per year when business is active. I commenced the lumbering business here in September, 1851. I helped

construct the West Branch Boom. I have been in the lumber business continuously from the time I came here to the present time. I had been in the lumber business previous to coming to Lock Haven, in the State of Maine, for upwards of ten years. Have had experience in the use of booms all the time I have been engaged in the lumber business. I think work commenced on the West Branch Boom the year before I came to Lock Haven. The first piers were constructed at the lower end of the island extending to the south shore of the river and the boom has been extended up the river from time to time year after year to its present terminus. The boom has been maintained and operated by the West Branch Boom Company from 1850 to the present time. The company has always used a sheer-boom together with the main-boom for the purpose of sheering the logs into the main-boom. The first sheer used was a stiff one. It was made of square timbers securely bolted together about six feet wide and about one hundred and fifty feet in length. It was held in its place for the purpose of sheering logs into the main-boom by a hinge at the north shore of the river and supported by a brace extending from the sheer to the shore, which kept it firm in its position. The sheer is in about the same relative position to the first pier of the main-boom as it always has been since the boom was first erected. As the main-boom has been extended up the river from time to time the sheer has been moved up the north bank of the river correspondingly. By the brace above mentioned the sheer was held in position—it lay at an acute angle with the north shore inclining down stream.

Q. How came it that you erected your sheer on the north shore, the main-boom being along the south shore?

A. Because if it had been placed on the south shore it would have turned the logs out of the boom instead of into it.

It was not practicable to maintain a sheer such as provided for in the charter of West Branch Boom Company elsewhere than on the north shore. On the south side of the river opposite the sheer-boom is a high hill or mountain and on the north side it

is low bottom land and by reason of this situation of the shores in times of high floods the current leads strongly toward the north shore and renders a sheer necessary to turn the logs into the boom. Besides, as the boom fills up with logs it dams up the water and throws the current naturally to the north shore of the river. For this reason also a sheer-boom is necessary at the point where it has been maintained.

There is not a boom on the Susquehanna River that does not necessarily maintain a sheer on the opposite side of the river from the main-boom.

The Susquehanna Boom always has and does now maintain a sheer on the opposite side of the river from the main boom. So far as my knowledge goes the Susquehanna Boom Company uses a stiff sheer.

The West Branch Boom could not be successfully operated and maintained without the use of a sheer-boom on the north shore as heretofore maintained and used by said company.

Q. You have explained to us the manner of constructing the first sheer-boom and the necessities for maintaining a sheer-boom on the north or opposite shore from the main boom, will you please explain what kind of sheer was in use by the West Branch Boom Company at the time of the serving of the injunction in that case, how long and how constructed and worked?

A. There was an adjustable sheer-boom hung by a hinge to an abutment on the north shore, operated and worked by means of oar blades in the water and windlass, and under control of experienced men who put it out into the current or withdrew it at will; and in no manner does the sheer prevent or delay the safe passage of rafts, boats, logs, masts, spars, or other lumber or impede the navigation of said river, but a free and unobstructed passage is at all times kept open; that said sheer-boom is never extended at a right-angle with the shore so as to lie directly across the stream, but it lies when in use at an acute angle with the shore, and in no case is there less than about four hundred feet of space or channel between the

extreme outer end of the said sheer-boom and the upper or cut-water pier of the main-boom. I think the sheer in at the time the injunction was served in this case had been in at that time at least three years and perhaps four. The main-boom and sheer are constructed in the best manner practicable so as not to impede the proper navigation of the river. The sheer-boom has never been extended entirely across the river. The purpose of the sheer is to turn all logs into the boom when it is out and as a rule that is the effect until the boom is full. I do not mean to say that the sheer-boom is kept out all the time. I have had experience as a driver of logs. The way we mark our logs is by stamping them several times with a marking hammer so that there will be one or more marks above water as the log swims. We always on our own logs put a side mark on side of the logs, cut with an ax. The man on sheer must know the marks on logs intended for Lock Haven and those intended for Williamsport.

The principal part of our stock (N. Shaw & Co.) is put into the Anderson Creek which empties into West Branch at Curwinsville, Clearfield Co. By reason of our location we can ordinarily turn out our logs from three to five days earlier than lumbermen can who run out of Bennett's Branch, the bulk of which are run to Williamsport. What I mean by turn out is letting them out into the main river. Bennett's Branch is a tributary of the Sinamahoning which empties in to the West Branch of Susquehanna. It is forty miles from Lock Haven to mouth of Sinamahoning. It is about a hundred miles from Lock Haven to Anderson's creek. At the mouth of Bennett's Branch they have a boom where they hold the logs until all the logs coming down the little streams are into that boom and then they let them all out into the river together. And as to Anderson's Creek we let our logs out as soon as the West Branch Boom is hung. This is only the statement of the course taken with the logs belonging to our firm.—I think there was about thirty-five million feet came out of Bennett's Branch during the spring of 1877. I think there has been driven out of Bennett's Branch as high as a hundred million feet in a year. The Anderson Creek logs and the Bennett's Branch logs could be distinguished from each other as they passed the sheer-boom at Lock Haven without any difficulty at all.

It is possible for experienced men to tell when logs are floating in the river whether thare is a greater proportion of Lock Haven or Williamsport logs passing at a given time.

The men employed on the West Branch Boom are experienced boom men and understand that kind of business.

It is possible at all times to turn in Lock Haven logs into the West Branch Boom and turn by all logs designed for Williamsport.

Sometimes ten thousand logs are turned into the West Branch Boom in an hour.

Some logs destined for points below Lock Haven will unavoidably go into the West Branch Boom. We had the boom pretty well filled this year without a sheer. When the wind is just right the logs will go into the West Branch Boom without a sheer and when it is not, a sheer is necessary to turn them in. When the wind blows strongly from the north and north-east every loose log floating down the river will go into the main boom without a sheer. When the term logs are used I understand it to mean loose logs, that is when that word is used in the charter I understand that to be the meaning. When logs are turned out into the river the parties having them in charge have men called drivers to follow them up until they get to the boom.

Cross-Examined by J. O. Parker.

There are a great many other streams emptying into the West Branch upon which logs are cut and stocked besides Bennetts Branch and Anderson Creek. I used these two streams to illustrate. Some streams are further off than others and the time the logs would arrive in the West Branch Boom would depend on the distance the logs have to run. By a drive is meant a collection of logs under one gang of men. It is my experience that frequently different drives, frequently come down the river intermingled. There was no extemporized sheer this year composed of rafts of timber.

Q. If it is so easy for experienced men to separate Lock Haven logs from Williamsport logs by their marks as they ap-

proach the head of the West Branch Boom why is it unavoidable in your judgment that the West Branch Boom should catch on an average as many Williamsport as Lock Haven logs every season?

A. It would be impossible to separate the logs. What I meant was that the logs could be *identified* by their marks. What I mean by an open channel being left between the sheer and the main boom is the space between the lower end of the sheer and the upper pier. When I say that the sheer-boom does not delay the safe passage of logs down the river I mean that although they go into the boom they are turned out with as little delay as possible.

In other words the safe passage of logs is only delayed so long as they are within the boom structure. It is the custom of lumbermen to write or telegraph to their drivers to let their logs out as soon as the booms are hung. It is very important for lumbermen who have drives of logs coming down the river to get the advantage of the first floods, and to drive their logs into the boom on the first floods. There are many seasons when we do not have any floods after the spring floods until fall.

THOMAS YARDLY, affirmed.

I reside at Lock Haven, Penn'a. I am the Secretary and Treasurer of West Branch Boom Company and have been for the past seventeen years. I have during that time been acquainted with the West Branch Boom and its workings. I direct the rafting men what to raft, when to raft and when to stop. I keep the book, receive and pay out the money of the company. I have in a great measure the control and management of the business of the company. The boom appears to have cost one hundred thousand dollars from the books of the company in my possession.

In repairs and extensions there has been expended about eighty thousand dollars since I have been Secretary and Treasurer. In consequence of facilities afforded by West Branch Boom large saw mills have been erected at Lock Haven for the manufacture of lumber. There was ten large saw mills at Lock Haven getting their stock of logs from West Branch Boom at the time

the injunction was served. From twenty to thirty million feet per year pass through the boom for which the company receive toll. The capacity of the boom when well packed is about fifty million feet. It is often filled more than once during the season. It is only packed ordinarily once a year and that in the spring of the year in time of high flood. I suppose twenty million feet would fill the boom in low water, that is not packed. All logs except the thirty million feet spoken of pass by and through the boom without the company securing any toll at all. All logs intended to be passed by the West Branch Boom are passed out in accordance with notice from the owners. It has been the uniform practice for the owners of logs destined for Susquehanna Boom to give West Branch Boom such notice. And the company has turned such logs out of the boom in compliance with such notice without complaint from the owners thereof so far as I know up to the time of filing of the Bill in this case.

During the time I have been in the employ of the company it has used a sheer-boom constantly. The sheer-boom has been in precisely the same place it is now ever since I have known the boom. The one in use when I first knew the boom was a narrow long platform of timber hinged to an abutment on the north shore braced out into the river by means of another similar platform of timbers. This sheer-boom was used until about 1873, then we put in a sheer that was kept out in the river by means of wings which has been used until injunction served. The present sheer is about three feet wide, of timbers made in sections and altogether about five hundred feet long, and was fastened to same abutment on north shore as the first sheer spoken of and is put out into the river or dropped to the shore by means of wings operated by the current. The one now in use is an improvement on the previous one. The present one can be more easily managed. When rafts are coming down the river we can drop it to the shore more readily than the former one and throw it back again easier.

There is always some one, generally two men, in charge of the sheer when in use.

If the Lock Haven logs are running more thickly than the other logs we have the sheer out and try to get the logs into the boom, and if the great majority of the logs running are Williamsport logs we drop the sheer to the shore and let them go by. Whenever rafts are running, the sheer is dropped to the shore so as to allow them to pass. For an hour say, we try to get all logs in, and the next hour we may let them all go by. The effort is to stop Lock Haven logs, but when extended the effect is to stop all or nearly all logs running. It has never been the object or purpose of the West Branch Boom Company to stop all logs in the boom whether they were intended for Lock Haven or Williamsport or other points below Lock Haven, but simply to get what logs are intended for Lock Haven. In the spring of the year logs cut on West Branch of Susquehanna river and its tributaries are marked and thrown into the streams, notices are given to the respective boom companies of destination of the logs so marked. A register is kept of the marks on logs ; a fac-simile being entered in such register. I give the men in charge of the boom and sheer a pass book containing a description of the marks of all the logs that are to pass the West Branch Boom, with instructions to turn them through as fast as they can. The logs are driven down the river from where they are thrown into the streams by men called drivers, in a confused mass.

There are times when a majority of the logs reaching the West Branch Boom are destined for that boom and there are other times, when the majority of the logs reaching that boom are destined for the Susquehanna Boom.—So far as practicable, we extend the sheer-boom when a majority of Lock Haven logs are passing and withdraw it when a majority of Williamsport logs are passing, with a view of taking up the former and passing the latter.

The way the men ascertain whether a majority of Lock Haven or Williamsport logs are passing is by estimating; by the marks. The boom hands can easily see the marks on the logs; they can walk out over them and go among them in boats. I never heard any complaint made of the sheer-boom prior to filing the bill in this case. During the time I have been here connected with the West

Branch Company it has kept an office in Lock Haven, and the office which I had charge of is the only office kept by the company.

Q. State whether or not the main and sheer-booms of the West Branch Boom Company are so constructed and managed as that in the best manner known they do not prevent, hinder or delay the safe passage of rafts, boats, logs, masts, spars, and other lumber, and so as not to impede the navigation of the river and so that an unobstructed passage is at all times kept open?

Objected to as calling for a conclusion from the witness instead of a statement of facts.

A. I think it is.

I do not think the West Branch Boom can be used and operated successfully without a sheer-boom.

Notices marked 1, 2 & 3 were served on me as Secretary of the West Branch Boom Company.

Copy of notices hereto attached and marked Exhibit "A."

Q. Was notice given by the complainants or either of them to to West Branch Boom Company on or before the 1st day of March, A. D. 1877, by letter mailed to the President of said company at Lock Haven, or otherwise notifying said company not to admit the logs of said complainants or either of them into said boom nor to stop the same, but to exclude them and pass them by on the out-side of said boom?

Objected to as leading and irrelevant.

A. The only notices received are those above referred to marked 1, 2 & 3 hereto attached and marked Exhibit "A."

The West Branch Boom Company did not stop any of the logs of the complainants or either of them during the year 1876 that I know of. If they gave us notice to pass them we did not stop them.

I passed through the West Branch Boom in 1876 such logs of

the complainants as I was notified to pass through:—I passed them through as rapidly as I could according to the stage of the water.

After the logs are passed through the West Branch Boom the company has nothing to do with such as are taken down the canal or otherwise to Williamsport. The West Branch Boom Company does not furnish a harbor below their boom for the logs taken down the canal,—the company has nothing to do with them. The West Branch Boom Company has discountenanced the taking of logs down the canal.

Cross-examined by J. O. Parker.

The West Branch Boom stops all logs that go into it for a certain length of time. The logs destined for Williamsport entering West Branch Boom, are stopped until they can be reached and turned out in the regular course of rafting. That course of rafting sometimes takes some weeks and sometimes the logs coming into the boom on a flood lose the benefit of that flood before they can be turned out.

When I say we did not stop any of the logs of the complainants or either of them during the year of 1876, I mean that we turned them through as soon as we could raft them out in the ordinary course of rafting and let them go adrift. Of course they were stopped, however, by the boom structure for a certain length of time. I have often received notice from the complainants or the Williamsport lumbermen to stop their logs in West Branch Boom. I do not remember the phraseology of the notices received, but the notices were to raft their logs at West Branch Boom. Have stopped logs designed for Williamsport without written notice from their owners to do so temporarily, as I have before stated, but rafted them out as soon as practicable.

Q. Have not by far the larger quantity of logs destined for Williamsport stopped in each season by the West Branch Boom until they could be reached and turned through—been so stopped without the written request of the owners thereof?

A. I believe so.

Q. As the structures of the West Branch Boom Company were maintained prior to the service of the injunction in this case, did they leave open a free and unobstructed passage in the river at all times?

A. There is a passage for anything managed by man—is free navigation at all times.

I do not consider that the passage is obstructed at all. The boom structure when in use does not extend entirely across the river. The outer end of the sheer when in use is not inside of the upper pier.

The outer end of the sheer when in use would fall inside of a line drawn from the upper pier parallel with the bank of the river. The lower end of the sheer is, however, several hundred feet up the river from the upper pier of main boom

An average of about one-half of the logs stopped at the West Branch Boom are turned through the boom and one-half rafted out for Lock Haven. So that in spite of the efforts of our men to distinguish betweeu logs for Lock Haven and Williamsport our boom catches about the same number destined for each place. The almost universal practice is to mark the ends of the logs.

Redirect. Logs are marked on the ends with a stamping hammer—generally the marks are put on a number of times on each log. The marks are generally quite clear so that they could be seen when floating along. Any logs which go in the West Branch Boom that are designed to go past are stopped. Such logs are stopped unavoidably in order to get our own logs. They are turned out promptly.

It is against the interest of the West Branch Boom Company to take up any logs designed for Williamsport because they take up the room of other logs and we do not get any toll on them. We do not get any pay for turning such Williamsport logs as have entered our boom through it. We charge toll on those we raft and on none others—I mean by rafting—assorting each man's logs and fastening them together by ropes and they are held below the boom until they are taken by tbe owners to the different mills to be manufacturered; and these that are turned through are permitted to float down the stream as they will.

Q. Are or are not logs destined for Williamsport which enter the West Branch Boom stopped by the boom in the same sense which logs to be manufactured at Lock Haven are stopped by it?

A. No they are not stopped in the same sense.

Re-Cross-examined:

The Williamsport logs are stopped by the boom structure as long as the Lock Haven logs are stopped by it. As the logs are reached in rafting out of the boom the Lock Haven logs are rafted together and detained here and the Williamsport logs are allowed to run loose. The difference is that the Lock Haven logs are held here for manufacture and the Williamsport logs are not. The West Branch Boom Company have an arrangement by which they receive two cents per log for the logs which are taken down the canal to Williamsport for the inconvenience of having the logs in the dam after they are turned through the boom here. The Canal Company pay the West Branch Boom Company the ten cents per log. The mark on the logs is simply an indentation in the wood—it is not burned or painted on.

Re-direct. We commence to raft out of the boom just as soon as the water is low enough so the logs will not break away from us. The lower charter limits of the West Branch Boom is the mouth of Bald Eagle Creek about two miles below Lock Haven. The original upper charter limits is about twenty miles up the river from Lock Haven. It is about a mile and a half from the dam at Lock Haven to the mouth of Bald Eagle Creek. Immediately above the dam is the mouth of the canal. The backwater of this dam extends up the river to the lower piers of the main boom. The rafting done by the men who run the logs down the canal is done in the pool between the dam and boom.

The length of the boom is about two miles and a half.

JOSEPH McGILL:

I am in the employ of the West Branch Boom Company. I have been in its employ over eleven years. I am boom-master now. I have occupied that position for the last four years.

that the only question really raised and decided by the court had relation to the proper construction to be put upon the respective charters of the corporations plaintiff and defendant as aforesaid. The court decided, as they construed said charters, the West Branch Boom Company had a right to use a sheer in the north half of the river, and that using it as it had done, no damage had been done to the plaintiffs. A few quotations from the pleadings will aid in making this appear.

(*a.*) Plaintiffs' bill set forth "that said Susquehanna Boom Company is a corporation created by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the twenty-sixth day of March, A. D. 1846." * * * * "That the said corporation are authorized and empowered to erect and maintain, on the West Branch of the river Susquehanna, between the borough of Williamsport and the mouth of Quinesheocque creek, such boom or booms with piers, as may be necessary for the purpose of stopping and securing logs, masts, spars, and other lumber floating upon said river, and erect such piers, side branch, or sheer booms as may be necessary for that purpose," that said corporation complainant shortly after such incorporation erected and have since maintained such booms, sheers," &c.

"That the West Branch Boom Company, defendant, was incorporated by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the twenty-ninth day of March, A. D. 1849, wherein it is provided * * * * That the said corporation are authorized and empowered to erect and maintain on the *south side* of the West Branch of the river Susquehanna, between a point opposite the mouth of Heiner's run and the mouth of Bald Eagle creek, such boom or booms with piers, as may be necessary for the purpose of stopping and securing logs, masts or spars, and other lumber floating upon said river, and erect such piers, side branches, or

The West Branch Boom Company never extended its sheer-boom entirely across the river to my knowledge. The men in charge of the sheer-boom are under my immediate control. I endeavor so far as possible to stop and run into the West Branch Boom the logs intended for Lock Haven and allow those destined for Williamsport to pass on down the river. It is a pretty difficult matter to tell whether the bulk of the logs are intended for Lock Haven as they are running, but I can tell when I have a good run of logs for Lock Haven. When there is a good run of Lock Haven logs we are obliged to turn all logs running in the river into West Branch Boom in order to get our own for Lock Haven.

When we find that the bulk of the logs running are Williamsport logs we turn the sheer-boom in to the shore and allow them to pass. And we only put the sheer out when a large proportion running are Lock Haven logs.

I do not think the capacity of the West Branch Boom is more than sufficient in ordinary water to hold the quantity of logs manufactured at Lock Haven.

Q. Is it to the interest of the West Branch Boom in any way to pass into its boom, logs destined for the Susquehanna Boom?

Objected to as leading.

A. Not that I know of.

Logs intended for Williamsport are turned out of West Branch Boom loose. It requires considerable work to do that.

The West Branch Boom Company pays for that work. The West Branch Company does not get any tolls on these logs turned loose that I know of. Do not know of my own knowledge whether it does or not.

They occupy space in the boom when there that would be occupied by logs for which tolls would be obtained.

We commence turning out logs from the boom as soon as the water gets low enough so we can hold our logs in rafts. When there is a heavy run of logs those on the south side of the river opposite the sheer-boom run into main boom uninfluenced by the sheer. All Williamsport logs are turned through the West Branch Boom as rapidly as it can be done.

The West Branch Boom cannot be properly and successfully operated without the use of a sheer-boom.

The sheer-boom must be placed on the north side of the river in order to be of any use. There have been no complaints made to me of the obstruction of the navigation of the river by the operation of this sheer-boom or otherwise.

I have frequently given orders to the men in charge of the sheer to trip it in when there would be a heavy run of Williamsport logs passing. My orders were obeyed. I think it was in 1876 that they commenced using the sheer just as it is now. I think it was three years ago this spring.

The one we have now can be put in or out with much greater facility than the old sheer.

Cross-Examined by J. O. Parker.

If there are any Lock Haven logs running we throw the sheer out as soon as the main-boom is hung.

We keep it out until the boom is full if there are Lock Haven logs running, if not we sometimes take it in and let the logs go by. Our object is to catch all Lock Haven logs and if there are any Williamsport logs among them the sheer turns them into the boom with the others. I tell by the marks whether Lock Haven or Williamsport logs are running. I can tell with a light on the sheer— night hawks and wide-awake lamps—in the night whether Lock Haven or Williamsport logs are running. Cannot tell all, but a good many. A majority of the logs run against the sheer.

We have not used any temporary sheer-boom this present

season. We have used nothing this season to sheer logs into the boom—no square timber rafts or anything of that kind. I knew the West Branch Boom to be filled or partly filled three times in one season—surface fills, not packed. Sometimes when the logs are squeezed in pretty well it takes several weeks to raft them all out. The logs have to come to the foot of the boom as they are reached. Williamsport logs are as likely to be among the last reached as the first.

When Williamsport logs are turned out of the boom here they run down the river and some are rafted up and run down the canal by men employed by the owners for that purpose. The men who take the logs in the pool to raft them into the canal do not take them into the pockets of the boom.

Re-direct. The Boom Company do not allow their men to take the logs into the pocket-boom. The men who catch up the logs below the boom are not in the employ of the Boom Company. I know that the West Branch Boom Company have endeavored to stop these men from catching up these logs below the boom and occupying the pool with their floats.

July 16, 1878.

Defendant offers bill, answer and record of a proceeding in equity in the Common Pleas of Clinton county to No. 2, May Term 1872, between the West Branch Boom Company plaintiff, and Wm. G. Barry *et al* defendant, for the purpose of proving that the catching up of logs in the pool below the West Branch Boom for the purpose of taking them down the canal is not the act of the West Branch Boom Company; is not done by their procurement or with their consent, but that the said Boom Company have, by the proceedings offered in evidence, endeavored to restrain and prevent such catching of logs for transportation down the canal.

Plaintiff"s counsel object to the evidence offered on the ground that the same is irrelevant, for the reasons, first that the plaintiffs is not a party or privy to the record offered in evidence; second, that the evidence offered, if received, would not rebut any evidence of the plaintiff, nor will it sustain any material allegation in the answer of the defendant in this case.

Defendants propose to follow the evidence above offered by proof showing that the defendants in said proceedings in equity were engaged by owners of mills and logs at Williamsport to take the logs as they passed through the West Branch Boom, down the canal to Williamsport.

Plaintiff"s counsel object to the additional offer of evidence on the grounds—first, that the evidence proposed in the original offer is in no manner preliminary to the evidence proposed in the additional offer and is therefore irrelevant and becomes original in its character, and as such is equally obnoxious with the original offer

of evidence and is entirely irrelevant; second, that the record offered in evidence is neither conclusive nor binding upon the parties thereto as a record has not been completed by evidence, judgment or decree of the Court in which it was filed.

Certified copy of record offered and received.

THOMAS YARDLEY called by defendant:

I am acquainted with Wm. Barry, Joseph Gronett, Adam D. Smith and John McNally, defendants in the bil in equity offered above, (No. 2, May Term, 1872, Clinton County Court of Common Pleas). I had to do in getting up that biil in equity for West Branch Boom Company, as its secretary and treasurer. I employed counsel.

Plaintiff's counsel object to the evidence offered by this witness, or to that part thereof which relates to the part witness took in behalf of West Branch Boom Company in employing counsel, taking testimony, or any act in reference to the record above offered in evidence.

Q. State what the defendants in the bill in equity given in evidence above, were doing in the pool of the dam at Lock Haven at the time said bill in equity was filed?

Objected to by plaintiff's solicitors.

A. They were catching up and rafting the logs we had turned through the West Branch Boom and were taking them down the canal.

They were catching such logs up and tying them up along the boom and shore and interfering with the work being done by the West Branch Boom. They were taking up the logs below and outside of the structure of the boom. The logs caught up by these parties were destined for points below West Branch Boom. The West Branch Boom Company objected to these parties catching up the logs in the manner I have indicated. The West Branch Boom Company invoked legal proceedings to restrain them *from* so doing

by the bill in equity offered in evidence in the legal proceeding referred to. The West Branch Boom Company has never participated in any manner in the taking up and rafting of logs designed for parties below West Branch Boom. These parties who were catching up and rafting the logs as before spoken of would sink large dry-goods boxes in the river and in that manner form buoys and tie large numbers of logs to them. The tying of these logs to these buoys in the stream interfered with the working of the West Branch Boom. It hindered the men who were working for the boom company; It hindered them in getting the Lock Haven logs from the boom to the mills at Lock Haven,

The logs caught up by the parties spoken of were logs which Williamsport parties had notified us they desired passed through West Branch Boom.

Cross-examined by Hon. J. W. Maryland:

Q. Did not all the difficulty that you have spoken of in reference to these parties catching logs, arise in reference to logs which the West Branch Boom Company had been notified not to catch but to pass by or through the boom?

Q. Yes. The form of the notice was to pass these logs through the West Branch Boom, as they were destined for the Susquehanna Boom.

Q. Was the notice you speak of in writing.

A. All the notices were in writing.

Q. Have you the written notice given on that occasion, to wit, in 1872.

A. I think I have all the notices for every year. I speak as an officer of the West Branch Boom Company.

Defendant offers.

Act of Assembly incorporating the West Branch Boom Company, approved March 29, 1849. Pennsylvania Laws, 1849, page 245.

Supplement to same, approved May 8, 1854, Pennsylvania Laws, 1854, page 666.

An act relating to the West Branch Boom Company, approved March 18, 1869, Pennsylvania Laws, 1869, Page 390.

EDWARD H. WELCH sworn:

I am a civil engineer; have been employed in that business about twenty-three years. I made and directed the making of a survey of the West Branch Boom and all its parts. I made a draft of my work. (Draft shown witness). The draft shown me is a tracing from the original map. I believe it correctly shows the entire boom, including the sheer-boom. I made my last survey in 1877. The draft is made to a scale of 500 feet to an inch. The main boom is constructed on south side of the river. The upper pier is two hundred feet distant from the south shore at low water mark and two hundred and thirty feet from the north shore.

From the centre of the sheer-boom abutment where the sheer is attached to the shore, to the upper pier of the main boom is a distance of nine hundred and thirty-nine feet. The sheer boom is 500 feet in length.

The dotted line at the end of the sheer-boom represents the arc of the circle described by the sheer in moving it out into the river. I did not intend to represent by the dotted line that the sheer is ever swung out into the river as far as that line extends. There will be about four hundred feet open space from the lower end of the sheer to the upper pier of the boom when the sheer is swung to the center of the river.

Cross-examined by B. S. Bently, jr.

I do not know how far they swing the sheer and do not know whether it is ever swung out into the river as far as the dotted line extends or not.

Defendant offers draft in evidence and it is marked exhibit "B" and attached. Model marked "C" shown witness. The model was

made under my direction. It represents the upper end of the West Branch Boom, showing the five upper piers, the sheer-boom abutment, the sheer-boom as in use at the time of the service of the injunction in this case. It correctly shows the banks of the stream. It is constructed upon a scale of one hundred feet to an inch. All the proportions of the model are constructed upon the scale as stated. Model offered and given in evidence.

N. SHAW, sworn:

I reside in Lock Haven; have resided here since April 1, 1854. I am sixty-four years old. I am engaged in the lumber business—manufacturing logs into lumber. I have been interested in a saw mill at Lock Haven, but am not now. I have been so interested for about eighteen years. The cost of the mill and equipments I was interested in was about $60,000 00. That mill was built after the erection of the West Branch Boom.

It received its stock from the West Branch Boom. The capacity of the mill was twelve million feet per annum. Quite a number of other saw mills have been erected at Lock Haven which are dependent mainly on West Branch Boom for their stock of logs. Twelve mills have been so erected at Lock Haven. I should suppose that the average cost of these mills including mill guards, piling grounds and all appurtenances was about thirty thousand dollars each.

The average capacity of these mills is about ten million feet per annum each. There were about three hundred and fifty men employed in and about all these mills. I think these mills were built at Lock Haven because the West Branch Boom had been constructed.

The main market for the lumber manufactured at Lock Haven is at Philadelphia, Baltimore, the Eastern part of Pennsylvania and in New Jersey—shipped from Lock Haven by railroad and canal.

I do not know how the mills at Lock Haven could be supplied with logs were it not for the West Branch Boom. I am

one of the directors and chairman of the executive committee of the West Branch Boom This executive committee was appointed by the directors of the company to manage the boom. I have been a director and member of the executive committee for the past fifteen years.

There has been some sort of a sheer-boom used ever since 1854—since the spring of that year. The sheer-boom has always been placed above the main boom and on the opposite side of the river—that is on the north side.

The first sheer-boom was constructed of square timbers, two timbers wide, constructed to break joints so as to make a stiff-boom. It was fastened to the north shore at a post, and there was a stiff brace from the shore to the sheer to hold it out into the river, which brace was hung on a hinge at about the centre of the sheer. Sometimes it was necessary to unhitch the sheer-boom when it was fastened to the post on the north shore and draw it up the river in order to get it out of the stream. It was difficult to manage. The sheer I have now described is substantially the one used until the one in use at the time the injunction was served in this case was constructed, which appears in model given in evidence by the defendant and marked "C."

The sheer as shown in model and in use when bill was filed, was put in in 1874 I think, and constructed after a plan furnished by me. It is an improvement on the sheer previously used and on any that I have seen, for our location. It is more easily managed, and is perfectly under the control of the men who are on it. It is thrown out into the river by means of windlass and chains attached to the fins. By reversing the windlass it is easily thrown to the shore. It takes more time to extend it than it does to withdraw it. It takes four or five minutes to extend it and a minute or a half a minute to withdraw it. I should think that this sheer when in use is not ordinarily extended quite to the centre of the river. The effect on logs floating in the river is the same with the present sheer as the one formerly in use when extended to the same angle in the stream—the only difference in the two booms is the difference in

construction and convenience in handling and using them. It is not practicable to stop the logs intended for the mills at Lock Haven without the use of a sheer in connection with the West Branch Boom.

The model marked "C" gives a proper representation of the sheer-boom, the main boom so far as it is shown, and of the shores of the river, and the proportions are correct. There are usually four men employed on the sheer-boom in the spring—sometimes more when the logs are running thick. These men are in constant attendance, night and day, and are employed by the boom company; they are men of experience in that business. My orders to those in charge of the sheer are, that when the logs are running thickly for places below the West Branch Boom, to retire the sheer and let them pass. The sheer is always retired to the shore when rafts, spars and floats of any description desire to pass. The orders always are to fill the boom, as far as possible, with Lock Haven logs only—we do not want the others. It is not possible to separate Lock Haven logs from logs destined for points below when they are running thickly in the river. The orders to the boom master always have been to turn out from the boom all logs destined for the Susquehanna Boom and other points below Lock Haven as soon as possible after they run into West Branch Boom. These orders have been followed just so far as it was safe so to do. Some of the plaintiffs in the bill in this case have requested me to catch and hold all of their logs possible, in the West Branch Boom. This request has been made at different times before and since the filing of the bill. Other persons not parties to this bill, owning logs destined for Williamsport, have made the same request. These verbal requests were made after the same parties had given written notice to the West Branch Boom Company not to stop their logs but to pass them through said boom. It is no profit to the West Branch Boom Company to take into its boom logs destined for points below Lock Haven. We have to pass them through free of charge at quite an expense to us.

Q. State whether in the year 1876 the West Branch Boom Company erected and maintained a wing or sheer-boom extending

from the north side of the river, half way across the same and above the upper pier of their boom as previously maintained, by which said device the said defendant extended their boom entirely across the said river and turned all logs, marts, spars, and other lumber floating upon said river into their boom at Lock Haven and thereby preventing the safe passage of rafts, boats, logs, marts, spars or other lumber?

Objected to by solicitor for defendants. 1st. Because the question is leading. 2d. The intent of the West Branch Boom Company is not material, the result of their acts is the real question in issue.

A. No. There is no turning of rafts, boats, masts or spars or anything of that kind into the boom at all.—We did not in 1876 nor at any other time turn all logs promiscuously floating in the river into the West Branch Boom. Sometimes there were not any logs destined for points below turned into the boom by means of the sheer, and at other times the sheer would turn in nearly all logs floating in the river.

There is always a safe passage for all rafts, boats, and other lumber except lumber floating loose on the surface, that is not rafted. The logs turned into the boom are rafted out as soon as possible with safety to the logs destined for Lock Haven and sometimes faster. I have been conversant with the lumber business and the use of booms in connection therewith for thirty-five years.

Q. State whether you are acquainted with the provisions of the charter of the West Branch Boom Company as contained in the second section of the Act approved the 29th day of March, A. D., 1849, and the provisions of the first section of an Act of Assembly entitled a Supplement to an Act entitled an Act to incorporate the Susquehanna Boom Company, etc., approved April 28, 1864, which has been extended by a subsequent Act to the West Branch Boom Company, and whether in your judgment the main boom and sheer-boom as constructed and used by the West Branch Boom Company is such a structure as the latter company was authorized by these Acts of Assembly to construct and use?

Objected to by solicitors for plaintiffs.

A. Yes.

Cross-examined by B. S. Bently, Jr., reserving all exceptions:

The first sheer used by the West Branch Boom Company was located about a half a mile below where the present one is situated, just above where the gut is shown on the draft marked exhibit "B." The sheer was located at that point for two years. It was then moved up the north shore of the river from time to time as the main boom was extended up the river, until finally it was located where it is at present situated.

Q. You have given a description of the construction and method of operation of the sheer-boom, will you now give us the effect of the sheer-boom, when thrown out as you have described, on the logs in an average driving flood?

A. The effect is to throw the logs from the north side of the river over toward the south side, and they will then naturally run into the West Branch Boom. Without the sheer being thrown out, sometimes all or nearly all would go into the West Branch Boom, and at other times there would be a large share of them run on past the boom. The course of the logs would under such circumstances depend on the flood and the direction of the wind.

Q. When the sheer is out is there as free and unobstructed passage in the river as there would be without the sheer or any of the piers of the boom?

A. Not for logs and other materials floating promiscuously on the surface of the river.

Q. When the sheer is out is there any other passage for logs destined for points below Lock Haven than the space between the lower end of the sheer and the upper pier of the main boom?

A. Many times there is. We frequently turn out from the West Branch Boom the logs destined for points below Lock Haven as fast as they run into the boom.

Answer objected to and question repeated.

A. There is no other passage way for logs destined for points below Lock Haven when the sheer is out than the space between the lower end of the sheer and the upper pier of the main boom.

Eder, Housel and Deemer requested me to catch and hold all of their logs in the West Branch Boom. I do not think that any other of the plaintiffs requested me to catch their logs at the West Branch Boom.

Q. Will you explain the method of rafting the logs out of the boom and of passing of logs destined for points below Lock Haven?

A. The men on the boom will form what is called a rafting gap between two piers, the logs came down into this gap promiscuously of every mark, logs belonging to parties in Lock Haven are turned inside the harbor or pocket-boom and rafted up along what is termed an assorting platform, logs that the boom company has had notice to turn out are passed into the main stream. This opening between the piers, as I have described, cannot be made and the logs separated, the Lock Haven logs turned inside the pocket-boom and the logs destined for points below turned out into the main stream when the water is very high. As a general thing it cannot be done when the logs are running fast. It is necessary to have the water subside.

Re-direct. The effect of placing the sheer-boom on the south side of the river would be to turn all logs away from the boom. It is not practicable to swing the sheer-boom from the upper pier of the main boom up the river toward the north shore. The reason why it is not practicable is because it will clog up and cannot be maintained I have tried that experiment on behalf of the West Branch Boom Company and demonstrated its impracticability.

Q. Has or has not the West Branch Boom Company always kept as free and open passage for all rafts, boats, and floating lumber in the river as could be kept by the best known appliances, consistent with the maintenance and operation of its boom?

Objected to by solicitors for plaintiffs. 1st. Because it is leading. 2d. Because the answer would be the mere inference of the witness and not the statement of the facts.

A. I think the boom company has done all it could do to keep a free and open passage for rafts, boats and floating lumber in the river, it has used the best appliances known for that purpose. The sheer-boom complained of is the best sheer the company has ever used.

Q. Was there ever a complaint made to the West Branch Boom Company by the complainants in this case or either of them as to the use of its sheer-boom before the complaint made in this case?

Objected to as immaterial and irrelevant.

A. None that I know of.

Notices which plaintiff's solicitors desired Thomas Yardley, a witness for defendant, to produce before the master, relating to logs destined for points below the West Branch Boom, produced and delivered to the master.

CHARLES KREAMER, sworn:

I reside in Lock Haven and am forty-seven years old. I am in the lumbering business, manufacturing logs into lumber. Have been in this business ever since I was twenty years old. I am acquainted with the location of the West Branch Boom and the sheer connected therewith. I have known the boom ever since a sheer has been used. I think it was in 1855 or 1856 that I first knew of a sheer being used by the West Branch Boom Company.

At that time the company used a stiff sheer and continued to use such a sheer until the present sheer was constructed and put in use. There is no difference in the effect on logs running in the stream between the sheer formerly used and the one now used. The present sheer is much more easily managed than the former one. The effect of both the sheers spoken of has been to throw the logs

running down the stream, into the West Branch Boom. The sheer must be placed on the north side of the river in order to have the effect of throwing the logs into the boom.

LUCIEN A. TRCZIGULNY, sworn:

I reside at Lockport, Clinton county, Pa., I am thirty-five years of age. I have been employed by the West Branch Boom Company at different kinds of work on the boom for twenty years, except two or three seasons.—During all that time the company has maintained a sheer-boom on the north side of the river. I think the company commenced the use of the sheer with fins in spring of 1874 or 1875—I think 1875. I have helped to operate this sheer each spring since it has been put in until last spring. The company keep experienced men on the sheer night and day when logs are running in the river. The present sheer is easier to manage than the one formerly used. The sheer is worked with windlass and chain. In an ordinary flood the sheer can be put out in three or four minutes, if the logs are running thick it takes a little longer. Should think it would take a minute and a half to trip the sheer in to the shore. The orders I had were that when the Williamsport logs were running thick to trip the sheer to the shore and allow them to go past. These orders were always carried out when I was there. When the majority of the logs running were destined for Williamsport we tripped the sheer and let them go past. When the logs running were of equal number for Lock Haven and points below or a majority of Lock Haven logs we put out the sheet and turned them into the West Branch Boom.

Q. Is or is not the use of a sheer-boom necessary for the successful use and operation of the main boom of the West Branch Boom Company?

Objected to by solicitors for plaintiffs.

A. It is necessary.

It must be placed on the north side of the river to be of any use. It is not practicable to use a sheer attached to the upper pier

of the main boom and extending out from that pier toward the north shore. I have seen the experiment tried on the West Branch Boom. The water and logs would form a jam at the upper end and sink it so it would not be safe for persons to remain on it to manage it. It is not possible to separate the logs destined for Lock Haven from those destined for points below at the head of the boom as they are running in the stream and turn the Lock Haven logs into the boom and allow those destined for points below to pass on down the river.

Q. With reference to logs passing into the West Branch Boom, destined for points below, state what has been the orders from the boom company to those in charge of the boom and what has been the mode of working the boom with respect to these logs with reference to passing the same through the boom?

Objected to.

A. The orders from the boom master to the men at work were to get them out as soon as possible. The men did get them out as soon as they could.

Q. State whether you have heard complaints made by the plaintiff's in this bill or either of them of the use of the sheer-boom of the West Branch Boom Company before the filing of this bill?

Objected to as immaterial and irrelevant.

A. I never did.

Cross-examined by B. S. Bently, Jr.

The sheer-boom was often hung out at night when logs were running. Sometimes it was out at night when the nights were dark and rainy.

The men working on the boom usually took the logs as they came in, rafting them out of the boom. When there is any part of the boom I have known the men at work on the boom to open the boom where these logs were, and turn the Williamsport logs out.

Q. Can such openings be made with safety until after the water has in a great measure subsided?

A. They cannot at all times be made with safety until the water falls.

Q. Then the logs so turned out would not reach Williamsport and other points below Lock Haven on the same flood which brought them into the West Branch Boom?

A. I cannot say that all the logs so turned out would reach Williamsport on the same flood on which they were brought to West Branch Boom.

Q. From your experience and knowledge of this river, taking into consideration the fact that the water had subsided, would not a large portion of these logs lodge upon the banks and require to be hauled into the stream in order to get them to Williamsport.

A. I think a large portion of the logs would require labor to drive them to Williamsport.

Re-direct. Logs put into the river, whether above or below West Branch Boom, require labor to drive them to their places of destination.

Re-cross-examination.

What we call a good flood for packing the boom with logs is from six to seven feet. I have seen logs running on two and a-half feet of water.

Q. On a six and a half or seven feet flood, if logs destined for Williamsport were not stopped at the West Branch Boom would not a large portion of them run through to Williamsport without assistance, and a much larger portion than if the same had been stopped in the West Branch Boom and turned out after the water had subsided?

A. Yes.

Re-direct.

Q. Is it possible to catch in the West Branch Boom at Lock Haven logs destined for Lock Haven without catching also logs destined for Williamsport, taking into consideration that logs for Lock Haven and logs for Williamsport are thrown into the Susquehanna river and its tributaries promiscuously?

Objected to.

A. It is not possible.

ADAM D. SMITH sworn:

I am one of the Defendants in the bill in equity, filed in the Court of Common Pleas of Clinton County, to No. 2, May Term, 1872, in equity, by the West Branch Boom Company. I was engaged in taking logs down the canal from Lock Haven to Williamsport at that time. I had at that time been engaged at that business for about six years. White, Lentz & White, Philbert, Otto & Miller, S. N. Williams & Co., and C. F. Ranstead employed me in that business. I caught the logs as they were turned out of the West Branch Boom into the river, rafted them together and run them down to Williamsport through the canal, and delivered them to the owners, and they paid me for so doing. I was stopped in 1872 by the West Branch Boom Company.

Solicitors for Plaintiff object to all the testimony of this witness as immaterial and irrelevant, and reserving all acceptions cross-examine.

Cross-examination by B. S. Bently, Jr.:

I stayed and stopped something over a week at the time I speak of having been stopped by the West Branch Boom Company. There were many times during the time I was at work at the business of rafting and running logs down the canal from Lock Haven, to Williamsport that that was the only way they could be got to Williamsport at the time I run them there, on account of the low water in the river.

Q. If these logs had not been stopped by the West Branch Boom, would not the whole or a large portion of them have gone through to Williamsport on the spring floods?

A. I do not know but that they would, a part of them.

Re-direct.

Q. State whether or not you were to take these logs to Williamsport through the canal without regard to the water or flood in the river?

A. Yes sir. I caught them up on the floods sometimes running outside the boom on the north side of the river. I was directed to do so by the owners of the logs.

Q. State whether or not you employed counsel to defend you in said bill in equity referred to in your evidence above, and if not who did.

Objected to as immaterial and irrelevant.

A. I did not employ counsel to defend me in said suit in equity, the log owners employed counsel to defend the case. The log owners sent us to H. C. Parsons and Judge Linn.

JOHN McNALLY sworn:

I am one of the Defendants in the bill referred to by Mr. Smith, the last witness. I was employed at the time that bill was filed in running logs from Lock Haven to Williamsport through the canal. I had been engaged in that business from 1865 and continued until a year after the bill in the case, in which I am a Defendant was filed, and then quit. Starkweather & Munson, Eder & Ruggles afterwards changed to Eder, Housel & Deemer, John Slonaker, Charles Howard, John A. Otto, Thompson & Harper, George Quinn, Tenn Eyck, Emery & Co. employed me to catch their logs and run them to Williamsport through the canal. I run a few floats for Dodge & Co., and Reading, Fisher & Co., a few stray logs gathered up in the fall. I was paid at the offices of the log owners above named. I do not know who employed the counsel in the equity suit referred to in which I was one of the Defendants. I did not employ counsel. I got the logs in the river, generally in strings, Joseph Gronett had men catching them in the river outside the boom at Lock Haven as they were turned out of said boom.

Some logs we got as high as $2.50 per thousand feet and some as low as $1.25 per thousand for running to Williamsport. We caught up logs in the river on the north side which had not been in the boom.

Solicitors for Plaintiff object to all the evidence of this witness and reserving exceptions cross-examine.

Cross-examined by B. S Bently, Jr.

The large porportion of the logs gathered up by me and run to Williamsport were logs that had been turned out of the West Branch Boom. Did most of the floating during the summer months. The floods in the river are usually in the spring and fall.

Q. If the logs so taken up and floated by you had not been stopped by the West Branch Boom, would not the whole or a large portion of them have gone through to Williamsport on the spring floods ?

A. That depends on the size of the flood. If it was a very large flood most of them would, but not all. On an average flood a majority of the logs would get through to Williamsport.

Re-direct. All the logs caught by me were caught in the pool of the Lock Haven dam. We used to gather up some above the West Branch Boom at Queen's run when there would not be a flood until late in the fall. We would get a few floats up there.

All the logs I caught up and run to Williamsport were caught in the West Branch of Susquehanna river above the mouth of Bald Eagle Creek, except one year when there was no flood in the fall, when logs were hauled out of the river all along from Lock Haven to Williamsport and run down the canal. They were hauled out and run down the canal by the owners. Logs of all marks were hauled out at this time. This was before 1872, but cannot give the year.

The Williamsport drives did not get in that year. They were not the logs which had been turned out of the West Branch Boom that were hauled out as spoken of, but all Williamsport logs lying in the river. I do not know that any of the logs hauled out of the river had been detained by the West Branch Boom Company. My orders were to catch up and float down the canal all logs of certain marks, whether they were turned out of West Branch Boom or were found floating down the river outside of the boom. I worked for Gronett in this business. I presume Gronett had a bargain with these Williamsport log owners. I did the floating and drew the pay, but not all the time.

Re-cross-examined.

I received some of my instructions from Gronett and some from parties in Williamsport. I did not have a contract with Williamsport parties to do this work. I was employed by Gronett. I do not know that Gronett had a contract with Williamsport lumbermen to do this work. Gronett employed from eight to fourteen men in this work. I was one of these men, and had charge of the floats; and that is all I know about Gronett having a contract, that he employed the men to do the work.

Q. Is it not usual for logs that have lodged between Lock Haven and Williamsport on account of the falling of the water of the spring flood to be floated from their lodgment and carried to Williamsport on the fall flood, and was not the year you have mentioned an exceptional year?

Objected to by solicitors for defendant.

A. Yes.

JOHN B. QUIGLEY, sworn.

I reside in Lock Haven. I have been employed by log owners at Williamsport to take logs from the pool of the Lock Haven dam through the canal to Williamsport. I began in 1867, and have continued from that time until now. In 1867 I ran logs for Dodge & Co., and in 1877 I ran logs for Wolverton & Tinsman.

B. C. Bowman & Co., Chas. Hevard, Williams & Forsman, C. B. & W. Howard, Howard & Slonaker, L C. Kenyon, Eder, Housel & Deemer, White, Lentz & White, John Clark, Bowman & Forsman, all Williamsport parties, also for Best, Hopkins & Weymouth, of Lock Haven. Nearly the same parties during the previous years. I caught these logs in the pool of the Lock Haven dam—from the bridge at Lock Haven to the Queen's Run dam, a distance of about three miles. Have brought some logs from the Queen's Run dam. We caught the logs outside of the boom when they were running in the river during a flood—and those that had come out of the boom also. This was in accordance with the directions of my employers. We caught all logs of the marks of my employers, whether they came out of the West Branch Boom or were running in the river outside of the boom—we caught all we could of them. The log owners, the parties mentioned, paid for catching and running the logs.

Q. Did the West Branch Boom Company, her officers or employees assist you or in any way encourage you in this work, or did they object to this work being done within her limits?

Objected to by plaintiff's solicitors as immaterial and irrelevant.

A. I commenced this business in 1867, and at that time the officers of the West Branch Boom Company did everything possible to prevent catching the logs in the pool of the dam. They claimed that as their territory; and the objection continued until there was a law suit. I have reference to the bill in equity before spoken of.

Counsel for plaintiffs object to all the testimony of this witness as immaterial and irrelevant, and reserving all exceptions cross-examines by B. S. Bently, Jr.

I had no written contract with any of the parties named.

I took up and floated down the canal to Williamsport during the season of 1877, sixteen million feet.

Can not tell how many of these logs had been turned out of

the West Branch Boom. I think a large proportion had been turned out of the West Branch Boom.

I do not think B. C. Bowman & Co. authorized me to take up any of their logs above the Lock Haven dam in 1877 or any other time. I am acquainted with the river from Lock Haven to Williamsport.

I never ran logs in the Susquehanna river.

Q. From your knowledge of the Susquehanna river between Lock Haven and Williamsport and from your knowledge of the floods in the said stream, will not the whole or the large proportion of the logs destined for Williamsport reach the said point on the average spring flood if they are not caught in the boom of the West Branch Boom Company?

A. As the river is at present arranged they would.—By, as at present arranged, I mean the sheer-booms that have been put in the river from Lock Haven down to Williamsport, this year. These sheer-booms are hung at the places where the logs would be most likely to lodge on either shore. There was Meigs and Joseph Gronett, besides myself, engaged in taking up and running logs by canal from Lock Haven to Williamsport. Gronett did not do much. I employed from seventeen to fifty men last year in this business. I think Gronett employed from six to ten or twelve men in 1877 in this business. I should say that Meigs employed from twelve to thirty men in 1877. Meigs and his men were engaged in the same business that I was.

Before the improvements were put in along the river last year, I think that about two-thirds of the drive would reach Williamsport, without obstructure at Lock Haven—that would depend, however, much on the flood. I think that would be the general average.

The logs which lodge at the spring floods are usually carried into Williamsport on the fall floods.

Generally on Susquehanna river they have a fall flood.

Re-direct.

The sheer-booms I have spoken of as having been put in between Lock Haven and Williamsport during the present year are fin booms, similar to the sheer-booms used by the West Branch Boom at the time of filing the bill in this case. They are erected on both sides of the river where the land projects into the river, where logs would be likely to lodge.

The effect of these sheer-booms is to prevent the logs lodging along the shores of the river. A number of these sheer-booms have been placed along the river between Lock Haven and Wil liamsport.

With these sheer-booms in the river between Lock Haven and Williamsport I think there can be no difficulty in getting into Williamsport all logs destined for Susquehanna boom.

Q. If the river between Lock Haven and Williamsport had been hung with sheer-booms heretofore as now, would there have been any difficulty in floating to the Susquehanna boom at Williamsport all logs destined thereto, whether they passed through the West Branch Boom or by it?

Objected to by Plaintiffs' solicitors as immaterial and irrelevant.

A. As the river is at present arranged, I do not believe that one log stops now where ten did before the sheer-booms were put in.

I never knew but one year that we did not have more than one floating flood in the spring of the year—that was in 1871. We generally have floods in March, April and May, and sometimes in June sufficient to float logs to Williamsport. Draft marked exhibit "B" shown witness. The draft correctly represents the boom, the pocket-booms and the entrance to the canal. I have been on the river and canal every week since 1867. This log business has been my chief business—that and measuring logs and square timber.

I know all the parties engaged in taking logs down the canal from 1867 to the present time.

Q. State what is the average, as near as you can estimate, of the annual amount of logs taken from Lock Haven through the canal to Williamsport by all the parties engaged in that business from 1867 to 1877.

Objected to. 1st. Because the witness is not competent to testify as to the matter contained in the question. 2d. Because it is not the best evidence, inasmuch as the scale made by the parties at the time and the books of the Canal Company will show the exact amount so floated to Williamsport each year. 3d. Irrelevant.

A. I think it would be about twelve millions of feet. Scaling logs is my business in the winter time.

I have general means of knowing how many logs were floated down the canal from seeing the floats enter the canal each week.

Cross-examination.

I was away from Lock Haven during the summer season when floats were put in the canal. A good many floats went into the canal that I know nothing about. I think the years of 1875 and 1876 would average for each year about twenty-six millions feet of logs that were run down the canal from Lock Haven to Williamsport.—I think the logs generally reach Lock Haven on the third flood, that is, the rear of the drive. The bulk of the logs generally come to Lock Haven on the second flood. The second flood varies from April, May and June.

Q. In case the logs destined for points below Lock Haven were not stopped by the West Branch Boom would most of them reach their destination on the flood which brought them to Lock Haven, or what proportion would reach their destination?

Objected to by solicitors for Defendant.

A. On an average flood the greater portion of the logs destined for points below Lock Haven would reach their destination on floods bringing them to Lock Haven were they not stopped by the West Branch Boom.

Re-direct.

Q. Mr. Quigley, you have stated in your examination in chief, that the annual average of the quantity of logs which have been taken down the canal during the ten years preceding the filing of this bill would be about twelve million feet and you have stated in your cross-examination that you were at times absent from home and consequently there were logs taken down the canal the quantity of which you could not know ; please state how you arrive at the estimate made and specify your means of knowledge ?

Objected to by solicitor for plaintiffs.

A. Generally by knowing what the other floaters were doing and from seeing the canal company's books.

I am generally at home during the summer season attending to this business of floating down the canal.

Re-cross-examination.

The business of floating logs through the canal was pretty small from 1867 to 1875. I think there was floated down the canal from 1867 to 1875 an annual average of nine million feet. The average stock that came down the river from 1867 to 1875 was much larger than from 1875 to 1877.

Witness explains as follows :

The reason was that no more logs were floated down the canal from 1867 to 1875 was that the West Branch Boom Company was always throwing obstructions in our way during these years ; we were always at loggerheads—generally interfering.

There was no trouble with the West Branch Boom Company after the disposition of the bill in equity of 1872. I believe the largest stock ever floated down this river was cut and put in in 1872. A part of the stock of 1871 came down the river in 1872. 1871 was a dry season and the entire drive did not get into the booms, but there was cut and put in in 1872 the largest stock I have ever known on the Susquehanna in any one year, and that was irrespective of the amount left back in 1871.

Q. Did not most of the stock of 1872 arrive at Lock Haven after the disposition of the bill of 1872 before referred to.

Objected to by defendant's solicitors. 1st. For vagueness in that it does not fix the time when disposition was made of the bill in equity referred to. 2d. It assumes a fact that is not contained in the evidence in this cause or in the previous testimony of this witness. 3d. Because the question is not predicated upon any avowed knowledge of the witness or upon any facts now attainable by the witness on the stand. 4th. Not cross-examination.

Counsel for plaintiffs reply that the time of the final disposition of the bill in equity of 1872 is not given in the question for the reason that although counsel for defendant have offered the full record in that case, nothing but the bill and answer have been produced, and no certified copy of the record has been produced showing what disposition was made of the case, and for this reason counsel for plaintiff are unable to indicate any time or what disposition was made of the said matter; but as Mr. Smith, a witness for the defendant and a party defendant in the said bill has testified that they were only stopped for about a week by virtue of a preliminary injunction served in 1872, counsel for plaintiff had a right to suppose that the matter had been finally disposed of.

A. I think most of the logs came into Lock Haven in 1872, before the last of June. I cannot say whether most of them came in in 1872 after the disposition of said bill in equity. I was taking up logs during the season of 1872. I was not served with any injunction in 1872. There was a great many rafts in 1872—was very difficult to get into the canal. My business of measuring timber was very good and floating logs was secondary with me.

Williamsport, July 18, 1878.

It is admitted by the plaintiffs that the Susquehanna Boom Company have placed at various points between Williamsport and Lock Haven where logs are liable to lodge, some twelve sheer or fin booms, constructed and operated upon the same principal as the sheer-boom of the Defendants. The said sheer-booms having been so placed to prevent logs from lodging and turn them into the channel of the stream, thus facilitating the driving of logs into the Susquehanna Boom. Nearly all the sheer-booms aforesaid have been put in the river within the past year. The nearest of these sheer-booms is about four miles above the head of the Susquehanna Boom. These sheer-booms are erected, some on the north and some on the south side of the river. The one furtherest up the river is just below the Lock Haven dam.

The upper pier of the main structure of the Susquehanna Boom is from fifteen to twenty miles below the Lock Haven dam.

Testimony for defendant closed.

No rebutting testimony being offered and it having been agreed between the parties to close the testimony at this time, the examiner declares the testimony closed.

COPY OF RECORD.

Among the records and proceedings enrolled in the Court of Common Pleas in and for the county of Clinton, in the Commonwealth of Pennsylvania, to No. 2, May Term, 1872, is contained the following:

COPY OF EQUITY—DOCKET ENTRY.

The West Branch Boom Company, vs Wm. G. Barry, Joseph Gronett, Adam D. Smith and John McNally.	May 4, 1872. Printed Bill in Equity, filed.

J. & E, $250.00 charged Attorneys.
Shff. Smith, 12.35 Jan. '7,'73, rec'd of T. Yardley
Attorney, 3.00 I. W. S.
Pro. Brown, 5.00 paid by Plaintiff.

And now May 4, 1872, Bill read, and it is ordered that a preliminary injunction issue as within prayed for, which is to be taken as dissolved unless a motion to dissolve the same be argued before me on the 13th day of May, 1872, at 10 o'clock a. m., of which five days

previous notice shall be given to Defendants or their attorney, Bond to be given in $2000.00, with surety to be approved by the Clerk, before the said injunction shall issue.

C. A. MAYER, P. J.

May 14, 1872, Bond of Thomas Yardley, Treasurer of West Branch Boom Company, and N. Shaw, approved and filed, and injunction issued—$1.50. May 10, 1872. A. H. Strayer appears for Defendants; vide appearance filed.

May 4, 1872, served the within bill in equity on Wm. G. Barry, Joseph Gronett, Adam D. Smith and John McNally, Defendants, by handing to each of them a true and attested copy of the same and making known to them the contents. Also endorsed on each book served on the Defendants a copy of the order of the Court for preliminary Injunction, service proven. So answers J. W. Smith, Sheriff—$4.50. May 4, 1872, Injunction served on Defendants so answers J. W. Smith, Sheriff—$3.50.

And now, May 15, 1872, the motion to dissolve the Injunction came on to be heard, and was argued and it was ordered, adjudged and decreed that the special injunction heretofore issued in this case be dissolved.

C. A. MAYER, P. J.

May 28, 1872, Plaintiff by her attorneys enter a rule on Defendants to file their plea, answer or demur within thirty days after service of notice. Rule issued 75 cents.

June 1, 1872, Rule served so answers J. W. Smith, Sheriff—$4.35. June 22, 1872, answers of Defendants filed.

BILL IN EQUITY.

BETWEEN

THE WEST BRANCH BOOM COMPANY, *Plaintiff*,

AND

WM. G. BARRY, JOSEPH GRONETT, ADAM D. SMITH and JNO. McNALLY, *Defendants*.

In the Court of Common Pleas of Clinton County. Sitting in Equity. No. 2, May Term, A. D. 1872.

To the Honorable, the Judges of said Court:—

Your Oratrix complains and says:

1st. That she is a corporation created by an act of Assembly of the Commonwealth of Pennsylvania approved the twenty-ninth day of March, A. D. 1849, and her principal office and business are located within said Commonwealth.

2d. That by her said charter she is authorized to erect and maintain, on the south side of the west branch of the Susquehanna river, between a point opposite the mouth of Heiner's Run and the

mouth of Bald Eagle Creek, in the county of Clinton, such boom or booms with piers as may be necessary for the purpose of stopping and securing logs, marts or spars, and other lumber floating upon said river, and such piers, side branches or sheer-booms as may be necessary for that purpose, and to raft out of said boom such logs, marts or spars, and other lumber, and to tie and secure the same for the owners thereof, in the waters of said river adjacent to and below her boom, and to use so much of the said river and its banks as may be reasonably necessary for that purpose; and by her said charter she is authorized and required to tie rafts of logs and other lumber to the banks of said stream, and to safe piers and places within the waters thereof along and below her boom, and in so doing to pass freely, without obstruction or hindrance of any kind whatever, back and forth across the said river and up and down the waters thereof, within the limits of her boom and below the same: and further, by her said charter and the supplement thereto heretofore mentioned, your oratrix has the exclusive right to raft and to receive tolls, boomage and expense for catching and rafting all logs and lumber which come into her said boom, except those which are designed in good faith to be driven, without being rafted, down the waters of the west branch into the Susquehanna boom at Williamsport.

3d. That for thus rafting, securing and delivering logs and other lumber your oratrix collects and receives from the owners thereof tolls or boomage and a reasonable sum for finding warp, rafting and booming, by authority and virtue of her said act of incorporation and of a supplement thereto approved the eighteenth day of March, A. D. 1869.

4th. That in pursuance of the rights and privileges secured to her by the said act of Assembly and its supplements, your oratrix has at great expense lawfully erected booms with piers on the south side of the west branch of the Susquehanna River, extending from William Bridgens' Eddy, above the city of Lock Haven, down to the Lock Haven dam, nearly opposite the residence of F. P. Myers, a distance of over two miles, and has been in the peaceable, quiet and uninterrupted enjoyment of the said river and its banks, between those points, for the period of fifteen years past, and until the disturbance of her franchises hereinafter complained of.

5th. The within three years last past the defendants have unlawfully placed temporary booms, buoys and other obstructions in the bed of said river and along the banks thereof, extending from one end to the other of your oratrix' boom piers, and below the same, in and along the same places which have been heretofore used by your oratrix to assort, raft and secure for the several owners their logs and lumber, and which her charter grants to her for that purpose, thereby making it more expensive for her to carry on her business, and occasioning to her patrons both delay and expense in getting, holding and removing their lumber.

6th. The defendants are in the constant practice of tying to said temporary buoys and booms, and also to the shores of the river adjacent thereto, long rafts or fleets of logs that have been passed through the boom on notice to your oratrix that they were designed to be driven to the Susquehanna Boom at Williamsport, thus occupying that very part of the channel and banks of said river, along and below said boom, within which your oratrix is required by charter to raft, secure and deliver lumber to the owners thereof, and your oratrix is thereby prevented from carrying on her proper work and business in the usual convenient and legal place, and is compelled to raft, tie and deliver lumber within her own boom at a great additional expense and delay to herself and to the owners of the lumber.

7th. That the West Branch of the Susquehanna river has been a public highway for seventy-one years past, and that by placing the various obstructions aforesaid in the same, they impede the navigation thereof and commit and maintain a public nuisance, and thereby do special damage to your oratrix by preventing her from passing up and down and across the river freely, and from rafting and securing lumber in the place appointed by law, and by making her work and business much more slow and expensive to carry on, and by very materially and unlawfully curtailing the amount of her business and of her profits.

8th. That the defendants, by the means aforesaid, obstruct and close the navigation of said river by rafts, boats and lumber, and thus compel the pilots of rafts, and boatmen and others, to

tie rafts and boats to the piers of the boom, thus preventing entirely the rafting out and delivery of logs and lumber until such obstructions are removed.

9th. That the defendants are now committing all the illegal acts hereinbefore complained of, and threaten to continue their commission in future, all of which acts are contrary to equity and injurious to and destructive of the rights, property, privileges and franchises of the plaintiff,

Wherefore your oratrix prays your Honors:

1st. That the said defendants may be restrained by the injunction of this Honorable Court, preliminary until hearing and perpetual thereafter, from placing booms, buoys and other obstructions in the bed of the West Branch of the Susquehanna river, between William Bridgens' Eddy and the Lock Haven dam, and from tying logs or rafts to such booms or buoys, or to floats, or along the bank of the river, and from rafting logs between said points which have been passed through the plaintiff's boom without payment of boomage, in pursuance of written notice that such logs are designed by the owners thereof to be driven down the waters of the West Branch into the Susquehanna Boom.

2d. That the said Defendants may be decreed to pay the Plaintiff such damages as may have accrued to her by reason of the unlawful acts of the Defendants.

3. That the Plaintiff may have such other and further relief as to your Honorable Court may seem meet.

And she will ever pray.

CHARLES CORSS,
CLINE G. FURST,
Solicitors for Plaintiff.

STATE OF PENNSYLVAINA,)
COUNTY OF CLINTON.) s. s.

THOMAS YARDLEY, Secretary of the West Branch Boom Company, being duly sworn according to law, deposes and says that the facts stated in the foregoing bill are true to the best of his knowledge and belief.

THOMAS YARDLEY.

Sworn and subscibed before me, April 30, 1872.
ORRIN T. NOBLE, Ald.

ANSWER.

BETWEEN

The West Branch Boom Company, *Plaintiff*,

AND

Wm. G. Barry, Joseph Gronett, Adam D. Smith and Jno. McNally, *Defendants.*

In the Court of Common Pleas of Clinton County. Sitting in Equity. No. 2. May Term, A. D., 1872.

To the Honorable the Judges of the said Court:

The answer of the above named Defendants to the bill of the West Branch Boom Company:

I. We admit the fact set forth in first paragraph of plaintiff's bill, but crave leave to refer to the charter when produced.

II. We deny that the charter of Plaintiff confers upon her the rights and privileges set forth and alleged in paragraph second of Plaintiff's bill, and crave leave to refer to the Act of Assembly incorporating the Plaintiff, and all of the supplements thereto which define the rights, powers and privileges of the said corporation.

III, We are not informed of the facts set forth in paragraph third of Plaintiff's bill, and neither admit nor deny them, but require Plaintiff to make proof of the same.

IV. We admit that the Plaintiff has erected a boom in the West Branch of the Susquehanna river, opposite Lock Haven, but we deny that she has been in the quiet and uninterrupted enjoyment of the said river and its banks between the points mentioned in paragraph four, for the last fifteen years, or for any length of time. As to the extent of the said boom, and whether the same was built in accordance with the charter of plaintiff, we are not informed.

V. We deny the allegations contained in paragraph fifth of plaintiff's bill. We admit that we have placed a few buoys in the river for the purpose of anchoring our rafts thereto when the shore opposite Lock Haven was occupied by board and timber rafts, but we deny that they interfered with any of plaintiff's rights.

VII. We admit that the Susquehanna River is a public highway, and has been for many years past, but we deny all the other allegations in the seventh paragraph of said bill contained.

VII. We deny the allegations contained in paragraph eight of plaintiff's bill.

We pray to be hence dismissed with our costs in this behalf most wrongfully sustained.

WILLIAM G. BARRY,
JOSEPH GRONETT,
ADAM SMITH,
JOHN McNALLY.

SAMUEL LINN,
HENRY C. PARSONS,
Solicitors for Defendants.

CLINTON COUNTY, ss:

William G. Barry, Joseph Gronett, Adam D. Smith and John McNally, being duly sworn, do depose and say that the

facts set forth in the foregoing answer are true when stated upon their own knowledge, and when stated upon information derived from others, they believe them to be true.

WILLIAM G. BARRY,
JOSEPH GRONETT,
ADAM D. SMITH,
JOHN McNALLY.

Sworn and subscribed before me this.....day of June A. D., 1872.

.....

COPY OF BOND.

Know all men by these presents, that the West Branch Boom Company and Nehemiah Shaw, are held and firmly bound unto William G. Barry, Joseph Gronett, Adam D. Smith and John McNally in the sum of two thousand dollars lawful money of the United States of America, to be paid to them, their certain attorney, executors and administrators or assigns, to which payment will and truly to be made. We do bind our successors heirs, executors, and administrators jointly and severally firmly by these presents. Sealed with our seals and dated the 4th day of May, A. D.1872.

Whereas the West Branch Boom Company has filed her bill in equity in the Court of Common Pleas of Clinton County, Pa., on this 4th day of May, 1872, against the said named obligees, in which bill they, the said West Branch Boom Company, *inter-alia* prays the Court aforesaid that the said obligees, Defendants therein named may be restrained from placing booms, buoys and other obstructions in the bed of the west branch of the Susquehanna River, between William Bridgens' Eddy and the Lock Haven dam, and from tying logs or rafts to such booms or buoys, or to floats, or along the bank of the river, and from rafting logs between said points, which have been passed through the Plaintiff's boom, to wit, the West Branch Boom Company's boom, without payment of boomage, in pursuance of written notice that such logs are designed by the owners thereof to be driven down the waters of the west branch into the Susquehanna boom.

And whereas the said Court on the 4th day of May, 1872, did order that the preliminary injunction issue as in said bill prayed for upon security being given as required by the Act of Assembly in such case made and provided:

Now the condition of this obligation is such that if the above bounden West Branch Boom Company shall pay to the said William G. Barry, Joseph Gronett, Adam D. Smith and John McNally, all damage that they shall sustain by reason of said injunction, then the above obligation to be void, or else to be and remain in full force and virtue.

May 4, 1872, Bond approved by me.
W. H. BROWN, Prot'y.

THOMAS YARDLEY, [L. S.]
Treas. W. B. B. CO.,
N. SHAW, [L. S.]

{SEAL of W. B. B. COMPANY.}

Endorsed thereon—No. 2, May Term, 1872. Bond.

THE WEST BRANCH BOOM COMPANY.
vs.
WILLIAM G. BARRY, *et al.*

Filed May 4, 1878.

COPY OF INJUNCTION.

STATE OF PENNSYLVANIA, }
COUNTY OF CLINTON. } S. S.:

[L. S.]

To William G. Barry, Joseph Gronett, Adam D. Smith and John McNally, Greeting:

Whereas it has been represented to us in our Court of Common Pleas of Clinton County, in a certain case there depending, wherein the West Branch Boom Company are Plaintiffs, and you, William G. Barry, Joseph Gronett, Adam D. Smith and John McNally, are Defendants on the part of the complainants, that in pursuance of the rights and privileges secured to her, by an Act of Assembly, approved March 29, 1849, and its supplements, she had at great expense erected booms, with piers, on the south side of the west branch of the Susquehanna River, extending from William Bridgens' Eddy, above the city of Lock Haven, down to the Lock Haven dam, nearly opposite the residence of F. P. Myers, a distance of over two miles.

We therefore in consideration of the premises aforesaid, do strictly enjoin and command you, William G. Barry, Joseph Gronett, Adam D. Smith and John McNally from placing booms, buoys

and other obstructions in the bed of the Susquehanna River between William Bridgens' Eddy and Lock Haven dam, and from tying logs or rafts to such booms or buoys, or to floats, or along the bank of the river, and from rafting logs between said points, which have been passed through the Plaintiff's boom without payment of boomage, in pursuance of written notice that such logs are designated by the owners thereof to be driven down the waters of the west branch into the Susquehanna boom.

Witness the Hon. C. A. Mayer, President of our said Court, at Lock Haven, the 4th day of May, A. D. 1872.

W. H. BROWN. Prot'y.

May 4th, 1872, served the written injunction on William G. Barry, Joseph Gronett, Adam D. Smith and John McNally, Defendants, by reading the same in their hearing. So answers J. W. Smith, Sheriff—Fees, $4.50. Per J. W. Fleming, Deputy Sheriff.

COPY OF APPEARANCE.

The West Branch Boom Company, vs. Wm. G. Barry, Joseph Gronett, Adam D. Smith and Jno. McNally,	In the Court of Common Pleas of Clinton County. In Equity. No. 2. May Term, A. D., 1872.

I hereby appear for William G. Barry, Joseph Gronett, Adam D. Smith and John McNally, Defendants in above stated case.

A. H. STRAYER,

May 8, 1872.

Endorsed thereon, No. 2, May Term, 1872. In equity.

The West Branch Boom Company *vs.* William G. Barry, et al. Appearance of defendants. Filed May 8, 1872.

COPY OF DECREE.

THE WEST BRANCH BOOM COMPANY *vs.* WILLIAM G. BARRY, *et al.*	In Equity.

And now May 15, 1872, the motion to dissolve the injunction came on to be heard and argued, and it was ordered, adjudged and decreed, that the special injunction heretofore issued in this case be dissolved.

C. A. MAYER, P. J.

Endorsed on back, No. 2, May Term, 1872. Filed, May 15, 1872.

COPY OF RULE.

BETWEEN THE WEST BRANCH BOOM COMPANY, *Plaintiffs*, AND WM. G. BARRY, JOS. GRONETT, ADAM D. SMITH and JOHN McNALLY, *Defendants*,	In the Court of Common Pleas of Clinton County, Pa. No.....In Equity.

And now May 28, 1872, the plaintiffs, by her attorneys, Charles Corss and Cline G. Furst, enter a rule on defendants to file their plea, answer or demurer within thirty days after service of notice of this rule.

To W. H. Brown, Esq., Prot'y.) Charles Corss,
) Cline G. Furst,
May 28, 1872.) Attorneys for Plaintiff.

Endorsed thereon, No. 2, February Term, 1872. In equity. Filed, May 28, 1872.

COPY OF RULE. (ISSUED).

BETWEEN

THE WEST BRANCH BOOM COMPANY, *Plaintiffs,*

AND

WM. G. BARRY, JOS. GRONETT, ADAM D. SMITH and JOHN McNALLY, *Defendants,*

In the Court of Common Pleas of Clinton County, No. 2, May Term, 1872. In Equity.

And now May 28, 1872, the plaintiff, by her attorneys, Chas. Corss and Cline G. Furst, enters a rule on the defendants to file their plea, demurer or answer, within thirty days after service of notice of this rule.

CHARLES CORSS,
CLINE G. FURST,
Attorneys for Plaintiffs.

CLINTON COUNTY, ss:

[L. S.]

Certified from the records, this 28th day of May, A. D. 1872.
W. H. BROWN, Pro'y.

Endorsed thereon, No. 2, May Term, 1872. In equity. Rule in defendants, etc.

THE WEST BRANCH BOOM COMPANY	Chas. Corss and C. G. Furst, Att'ys for Plaintiffs.
vs.	
WILLIAM G. BARRY, *et al.*	Samuel Linn & H. C. Parsons. Att'ys for Defendants.

June 1, 1872, served the within rule on the within named defendants, by handing to each of them a true and attested copy of the same and making known to them the contents. So answers P. B. Smith, Deputy Sheriff, for J. W. Smith, Sheriff.

COMMONWEALTH OF PENNSYLVANIA,)
COUNTY OF CLINTON,) SS.

[*Seal.*]

I, G. W. Batcheler, Prothonotary of the Court of Common Pleas in and for the said county, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein the West Branch Boom Company is plaintiff, and Wm. G. Barry, Joseph Gronett, Adam D. Smith and John McNally are defendants, as the same remains of record before the said Court at No. 2, of May Term, A. D. 1872, Equity Docket.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this Twentieth day of July, A. D., 1878.

G. W. BATCHELER, Prothonotary.

(*1.)

WILLIAMSPORT, Feb. 2, 1877.

Lock Haven Boom Co.: Gentlemen—We hereby notify you to pass through your boom, this season (1877), our logs marked as follows: M. E., ME3, 357, BEN, OPF, ELxW, EDER, 235, CITY, as we desire to saw them at Williamsport.

Truly,

EDER, HOUSEL & DEEMER,
EDER, LENTZ & WHITES,
M. EDER.

(*2.)

WILLIAMSPORT, Feb. 2, 1877.

Lock Haven Boom Co.: Gentlemen—We hereby notify you to pass through your boom, without detention, all logs marked B & P. and hatchet B, that are floating down the West Branch river this coming season, (about 3,000,000 feet.)

Truly yours,

B. C. BOWMAN & CO.

(*3.)

To West Branch Boom Company, Lock Haven, Pennsylvania. Gents—You will please take notice that we have in the West Branch of the Susquehanna river, and its tributaries, above the limits of

your boom, about thirteen million feet of white pine and hemlock logs, marked £ and clover leaf, also all old logs marked O. K., 5 and 3B, which we are desirious to drive to the Susquehanna Boom. You will please pass them through your boom without delay, and oblige.

Please acknowledge receipt.

Respectfully, &c.,

PECK, BARROWS & CO.,
F. COLEMAN.

MASTER'S REPORT.

BETWEEN

THE SUSQUEHANNA BOOM CO., H. BROWN, CHARLES HIBARD, JAMES V. BROWN, B. C. BOWMAN & CO. et al., *Plaintiffs*,

AND

THE WEST BRANCH BOOM COMPANY, *Defendants*.

In the Supreme Court of Penn'a. Eastern District, No. 1, January Term, 1877. In Equity.

TO THE HONORABLE, THE JUDGES OF SAID COURT:—

The undersigned Examiner and Master appointed by the Court to take the testimony in this case and report upon the same, begs leave to report as follows:

He met the parties and their solicitors and reduced the testimony to writing which is attached to this report.

There is scarcely any conflict in the testimony, and therefore little difficulty in arriving at correct conclusions of fact, which the Master finds as follows:

1. The Susquehanna Boom Company was incorporated by an Act of General Assembly of Pennsylvania approved the 26th day of March, A. D. 1846, and as early as A. D. 1849—said corporation in pursuance—of its charter—erected a boom on the West Branch of the Susquehanna river at Williamsport, for the purpose of securing logs and other lumber floating on said river.

2. The West Branch Boom Company was incorporated by an Act of General Assembly of Pennsylvania, approved the 26th day of March. A. D. 1849, and during that or the following year, in pursuance of its charter, constructed a boom on the south side of the said West Branch of the Susquehanna river at Lock Haven, about about twenty-five miles above Williamsport, for the same purpose as the Susquehanna Boom was erected.

3. The said corporation have maintained their said booms from the time of their erection to the present, and have from time to time stopped and secured in their respective booms quantities of logs and other lumber.

4. The greater portion of the logs floated into the Susquehanna Boom are placed in the river above Lock Haven and must pass the West Branch Boom before reaching their destination.

5. It appears from the testimony that Eder, Housel & Deemer and B. C. Bowman & Co., plaintiffs, are, or were at the time the Bill was filed in this case, engaged in the lumbering business at Williamsport, and obtain a portion at least, of their logs above Lock Haven and float them down the Susquehanna river to Williamsport.

6. Williamsport lumbermen who desired to have their logs passed through the West Branch Boom during the season of A. D. 1877 gave written notices to that effect to the officers of the West Branch Boom Company. The following is a copy of the notice given by B. C. Bowman & Co., a firm named as Plaintiffs in this bill, and the notices given by the others are substantially like it:

Williamsport, Feb. 2, 1877.

West Branch Boom Company, Lock Haven, Pa. You are hereby notified to pass through your boom, without detention all logs marked 'B & P.' and 'hatchet B,' that are floating down the West Branch River this coming season (about 3,000,000 feet).

Truly yours

B. C. BOWMAN & CO."

7. The main structure of the West Branch Boom is located on the south side of the river, and does not extend more than half way across the same.

8. The sheer-boom complained of by the plaintiffs is hung by a hinge to an abutment on the north shore of the river and is worked by means of oar blades in the water and windlass, and is thrown out into the current or withdrawn at will. From the centre of the abutment, to which the sheer-boom is attached, to the upper pier of the main boom is a distance of nine hundred and thirty-nine feet: the sheer itself is five hundred feet in length, and the river at the upper pier of the main boom is four hundred and thirty feet in width at low water.

9. The West Branch Boom Company have used a sheer-boom attached to the north shore of the river, continuously from the time of the construction of its boom, and in about the same relative position to the upper pier of the main boom.

As the main boom has from time to time been extended up the river, the sheer has been moved up the north bank correspondingly.

10. The sheer used until A. D. 1874, when the one complained of was put in, was a stiff one, made of square timbers, bolted together, about six feet in width and one hundred and fifty in length and was held in its place by a hinge at the north shore of the river, and supported by a brace extending from the sheer-boom to the shore.

11. The effect of the sheer-boom now used is to turn all, or

nearly all logs floating down the river, into the West Branch Boom until the same is filled, making the sheer-boom nearly as effectual as though it extended from the north shore to the upper pier of the main boom.

12. When the spring floods come, logs destined for Lock Haven and Williamsport are thrown into the river and its tributaries at, or near the same time, and frequently by the time they reach the West Branch Boom, are intermingled so that it is impossible to separate them while floating in the river.

13. Without the sheer a portion of the logs destined for Williamsport would necessarily float into, and be stopped by, the West Branch Boom, and a portion would pass on down the stream to their destination.

14. The logs destined for Williamsport which are stopped by the West Branch Boom are passed out of said boom as soon as practicable, free of charge to the owners thereof. Such logs cannot always be passed out until the water has fallen in the river, so that the logs so stopped and turned out, cannot be floated to Williamsport on the flood which brought them to Lock Haven, but must remain in the river until another flood shall come.

15. Such delay is an injury to log owners.

16. The Susquehanna Boom Company suffers injury by the stoppage of logs, destined for Williamsport, in the West Branch Boom, as follows: Many owners of logs stopped at Lock Haven procure them to be taken down the canal to Williamsport, and in that way avoid the payment of tolls to said Susquehanna Boom Company, which would not be possible if the logs were not stopped by said West Branch Boom.

17. The Master is of opinion that a sheer cannot be of any service whatever to the West Branch Boom unless it is hung on the north shore of the river, and in substantially the same place where it was at the time the preliminary injunction was granted in this case, and that the boom is of very little value without a sheer.

18. The lumbering interests of Lock Haven depend almost

wholly upon the maintenance of the West Branch Boom. The evidence shows that at the time the Bill was filed there were eleven or twelve mills at Lock Haven, costing in the aggregate nearly three hundred thousand dollars.

19. The West Branch Boom has cost the company one hundred and eighty thousand dollars in its erection, extension and repairs, and the Susquehanna Boom Company has expended in the erection and extension of its boom, twelve hundred and fifty thousand dollars.

The Master has stated such conclusions of fact as he deems necessary for the proper determination of the case. The real question involved, is whether the West Branch Boom Company, under its charter and supplements thereto, has the right to occupy the south half of the river with its main boom, and attach a sheer five hundred feet in length to the north shore and extend it into the river to such a point as that the sheer together with the main structure of the boom constitutes a practical occupancy of the whole river from shore to shore, so far at least as floating logs are concerned.

The Master does not intend to enter into any elaborate discussion of this question, but will content himself with a few suggestions.

It is provided by the second section of the Act of the 29th day of March, A. D. 1849, incorporating the West Branch Boom Company, "That the said corporation are authorized and empowered to erect and maintain, on the south side of the West Branch of the river Susquehanna, between a point opposite the mouth of Heiner's Run and the mouth of Bald Eagle Creek, such boom or booms, with piers, as may be necessary for the purpose of stopping and securing logs, masts or spars and other lumber floating on said river, and erect such piers, side branches or sheer booms, as may be necessary for the purpose: Provided, that said *booms* shall not extend *more than half way across said river*, and be so constructed as to admit the safe passage of rafts, boats, logs, masts, spars or other lumber, and not impede the navigation of

said river and branches thereof." And in the seventh section it is provided, that "A free and uninterrupted passage shall be kept open so that the navigation of the river shall be free as it now is."

It is conceded that said river is a public highway; and if that is so, what right has the defendant to obstruct the same except in the manner expressly authorized so to do by the Legislature.

Defendants charter expressly provides that the *booms* of said company shall not extend more than half way across the river, commencing at the south bank. It does not say the main structure shall extend more than half way across, and that the wing, or sheer-booms, may be so constructed and located as practically to amount to an obstruction of the entire stream, but that the *booms*, including wing or sheer-booms, shall be confined to the south half of the river, leaving at least one-half of the river at all times unobstructed. It was said in the argument before the Master that the sheer was not a boom structure but an instrument. It is attached to a substantial pier on the north side of the river, is of sufficient length so that when ordinarily extended it reaches nearly to the centre of the stream, and according to the testimony of every witness who speaks on the subject, it is a sufficient obstruction to turn all, or nearly all logs, floating in the river at that point into the main boom. It must be conceded that it is an exceedingly effective instrument.

The Master is of opinion that it is as much a part of the boom as any portion of the structure. It also seems clear that the Legislature intended by limiting the company to the south half of the river to leave the other half of the highway clear for occupation by any and all persons desirous of floating rafts, logs or lumber of any description from points above Lock Haven to places below. When the Legislature said to the company, you may occupy the south half of the river, the grant cannot be construed to give it the right to occupy the whole stream from bank to bank. Half way across means less than the whole distance.

Immediately following the limitation to the south half of the river is this unequivocal language: "And be so constructed as to admit of the safe passage of rafts, boats, logs, masts, spars and other lumber, and not impede the navigation of said river and branches thereof." Can it be said that the sheer complained of admits of the passage of any logs floating in the river when it is extended? If it does not, it certainly is an obstruction, and, unless the language quoted from the charter is utterly senseless, it is an unlawful obstruction.

This Court placed a construction upon the charter of the West Branch Boom Company in the case of said company vs. Dodge et al., 7th Casey, 285. In that case the Court says: "It appears to us, therefore, that in its relation to the owners of lumber destined to be driven below the boom, the company is bound to see that its passage is not obstructed by the boom, and they are not justified in stopping by their boom any lumber not of staved rafts, except what is destined to be stopped there."

It is claimed that the Act of Assembly, approved the 8th day of May, A. D. 1854, entitled, A Supplement to an Act incorporating the West Branch Boom Company, placed a construction upon the 7th section of the charter, which authorized the company to stop all logs floating in the river at its boom, unless notice had previously been given as provided in said 7th section, and relieved the company from keeping open at all times a free and unobstructed passage, etc. The supplement referred to may have the effect claimed for it as to all logs which would run into West Branch Boom with only the obstructions in the river the company was authorized to place there by its charter, but that Act did not authorize the company to place any obstruction in the north half of the river, and thus turn all, instead of a part of the logs, destined for points below Lock Haven into its boom. The supplement referred to gave the company no greater right of occupation than it had before, but simply relieved it from liability for stopping logs destined for points below, with the structure the charter authorized, unless notice had previously been given as required by the 7th section of the Act of incorporation.

It was also contended by the Defendants' solicitors, on the argument before the Master, that the question in controversy was solved by an Act of Assembly, approved the 18th day of March, A. D. 1869, extending the provisions of an Act entitled, "A Supplement to an Act entitled, An Act to incorporate the Susquehanna Boom Company, approved the 28th day of April, A. D. 1864, to the West Branch Boom Company.

The part of said Act relied upon is as follows: "That it shall and may be lawful for said Boom Company to extend their said boom up the said Susquehanna river, from time to time, and at such points or places on said stream as the company shall determine that the public interests require."

The Master is of opinion that this Act, as extended to the West Branch Boom Company, permits the said company to extend its boom up the Susquehanna river on the same side thereof as provided in its charter, and does not authorize it to cross over and occupy the north side, or the entire river.

In conclusion, the Master reports that the sheer-boom complained of is an unlawful obstruction in the West Branch of the Susquehanna river, placed there by the Defendant; that the Susquehanna Boom Company and B. C. Bowman & Co., are shown to have sustained, or are likely to sustain, injury therefrom, and that in his opinion the injunction heretofore granted should be made perpetual.

Respectfully submitted,

M. F. ELLIOTT, Master.

IN THE SUPREME COURT OF PENNSYLVANIA,

EASTERN DISTRICT.

The Susquehanna Boom Company, H. Brown, Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Supt., John G. Reading, Charles Bartles, John G. Reading, Executor, Augustus G. Richey, William P. Emery, Judiah Higgins and George H. Bartles, trading as Reading, Fisher & Company, Plaintiffs.	Of January Term, A. D. 1877.
vs.	No. 1.
The West Branch Boom Company, Defendant.	In Equity.

DEFENDANT'S EXCEPTIONS.

The Defendant, *The West Branch Boom Company*, respectfully excepts to the "Report" of Mortimer F. Elliot, Esq., the Master appointed to report the facts and conclusions of law arising from the evidence in the above case, which report he has prepared and notified the said Defendant he proposes to file in the said Court on the twentieth day of February, A. D., one thousand eight hundred and seventy-nine, for the following reasons; and they request the said Master to re-examine the subject and amend his report, also that he attach these exceptions and return them with the same to the said Court with the date of the filing of the said exceptions with him, viz.

First Exception. Because the Master finds and reports that "it appears from the testimony that Eder, Housel & Deemer, and B. C. Bowman & Co. Plaintiffs are, or were at the time the bill was filed in this case, engaged in the lumbering business at Williamsport and obtain a portion at least of their logs above Lock Haven, and float them down the Susquehanna River to Williamsport, "whereas there is no evidence whatever that they had a single log in the river above Lock Haven at the time of the filing of this bill, or that they or either of them contemplated having logs therein, or that their logs or the logs of either of them had ever been detained by the West Branch Boom, or that they or either of them had ever in any manner suffered injury or loss from the use, by The West Branch Company, of the sheer-boom complained of in the bill.

Second Exception: Because the Master has not reported that "sheer-boom" is a term of art and has a special meaning derived from its use among lumbermen, as established by the evidence, and that according to such special meaning must it be interpreted and construed.

Third Exception: Because the Master finds and reports in paragraph 10 that "the sheer used until A. D. 1874, when the one complained of was put in, was a stiff one made of square timbers bolted together about six feet in width and one hundred and fifty feet in length, whereas there is no evidence that the sheer *used down to 1874*, was only one hundred and fifty feet in length.

Fourth Exception; Because the Master finds and reports, in paragraph eleven, (11,) that "the effect of the sheer-boom now used is to turn all or nearly all logs floating down the river into the West Branch Boom until the same is filled, making the sheer-boom nearly as effectual as though it extended from the north shore to the upper pier of the main boom," whereas, as established by the evidence, the effect of said sheer-boom *as* used by the West Branch Boom Company is, as far as is practicable, to turn such logs as are destined for Lock Haven lumbermen into the West Branch Boom, and at the same time detain the fewest possible number of logs destined for Williamsport, which Williamsport logs are passed through the

West Branch Boom and turned out below as rapidly as possible, in obedience to the provisions of the Charter and supplements of the said West Branch Boom Company.

Fifth Exception: Because the Master finds and reports in paragraph fifteen (15) that "such delay is an injury to log owners," whereas there is no complaint of log owners except such as are named as parties Plaintiff in this bill, which complaint as set forth in this bill is wholly unsupported by the evidence.

Sixth Exception: Because the master finds and reports in paragraph sixteen (16) that "the Susquehanna Boom Company suffers injury by the stoppage of logs destined for Williamsport, in the West Branch Boom as follows: many owners of logs stopped at Lock Haven procure them to be taken down the Canal to Williamsport and in that way avoid the payment of tolls to said Susquehanna Boom Company, which would not be possible if the logs were not stopped by the West Branch Boom," whereas, it is established by the evidence that the very smallest number of the logs taken down the canal are stopped by the West Branch Boom; that the Williamsport owners of logs employ large numbers of men at flood time to go out upon the water in boats and catch up their logs above, below, and outside of the West Branch Boom, logs which have never even entered the said boom, raft them into floats and take them down the Canal; that by far the greater part of the logs taken down the Canal are thus caught up by the owners near Lock Haven because the mouth of the Canal is at that point and logs can be floated into the canal without difficulty; that the West Branch Boom Company is in no manner responsible for the same; that the Susquehanna Boom Company does not complain of the same in her bill, and that as the limits of the Susquehanna Boom do not extend within ten miles of the said point where these logs are caught said corporation is not in position to complain of the West Branch Boom Company.

Seventh Exception: Because the Master reports that "the real question involved is, whether the West Branch Boom Company under its charter and supplements thereto, has the right to

occupy the south half of the river with its main boom and attach a sheer five hundred feet in length to the north shore and extend it into the river to such a point as that the sheer together with the main structure of the Boom constitute a practical occupancy of the whole river from shore to shore, so far at least as the floating of logs are concerned;" whereas the questions involved are *inter alia.*

1st. Is the West Branch Boom Company authorized by its charter and the supplements thereto, to erect and maintain a a sheer on the opposite (or north shore) of the river from the main boom?

2d. If yea, what are the restrictions or limitations contained in said charter and supplements upon the extent and manner o use of said sheer?

3d. Can the Plaintiffs in this bill or either of them complain?

Eighth Exception: Because the Master finds and reports tha the "Defendants charter expressly provides that the booms o said company shall not extend more than half way across the river commencing on the south bank. It does not say the main structure shall extend more than half way across, and that the wing or sheer-booms may be constructed and located as to practically amount to an obstruction of the entire stream, but that the booms, INCLUDING WING OR SHEER-BOOMS shall be confined to the south half of the river, leaving at least one-half of the river at all times unobstructed."

Ninth Exception: Because the Master reports that "the sheer is as much a part of the boom as any portion of the structure," whereas it is an instrument necessarily separated from the main boom, and erected and maintained on the opposite shore from the main boom, and from the fact of the utter impracticability of using it elsewhere than on the opposite or north shore, the Legislature, when it enacted that the West Branch Boom Company might "erect such piers, side branches, or *sheer-booms*

as may be *necessary for the purpose, etc.*, must have meant to authorize the erection and maintenance of the said sheer where it would be useful and not where it would be useless itself and render the main boom useless. Hence the words "said booms" in the proviso must by a reasonable interpretation be construed as referring only to the "main boom" and not to the sheer.

Tenth Exception: Because the Master reports that "it seems clear that the Legislature intended by limiting the company to the south half of the river to leave the other half of the highway clear for occupation by any and all persons desirous of floating rafts, logs or lumber of any description from points above Lock Haven to places below."

Eleventh Exception: Because the Master reports as follows: "Can it be said that the sheer complained of admits of the passage of any logs floating in the river when it is extended? If it does not, it certainly is an obstruction, and unless the language of the charter is utterly senseless, it is an unlawful obstruction;" whereas it does admit of the passage of logs, &c., as established by the evidence, so far as is practicable and consistent with the spirit of the charter and supplements of said The West Branch Boom Company.

Twelfth Exception: Because the Master erred in his construction of the Act of Assembly approved the eighth day of May, A. D, 1854, as follows: "the supplement referred to may have the effect claimed for it, for all logs which would run into the West Branch Boom with only the obstructions in the river the Company was authorized to place there by its Charter, but that act did not authorize the Company to place any obstruction in the north half of the river and thus turn all instead of a part of the logs destined for points below Lock Haven into its boom. The supplement referred to gave the Company no greater right of occupation than it had before, but simply relieved it from liability for stopping logs destined for points below, with the structure the Charter authorized unless notice had previously been given as required by the seventh section of the Act of incorporation.

Thirteenth Exception: Because the Master erred in his construction of the Act of Assembly approved the 28th day of April, A.D.1864, entitled a supplement to an Act entitled an Act to incorporate the Susquehanna Boom Company "which was extended to the West Branch Boom Company by an Act of Assembly approved the 18th day of March, A. D. 1869, as follows "the part of said Act relied upon is as follows, that it shall and may be lawful for said Boom Company to extend their boom up the said Susquehanna River from time to time and at such points or places on said stream as the Company shall determine that the public interests require "the Master is of opinion that this Act as extended to the West Branch Boom Company permits said Company to extend its boom up the Susquehanna River on the same side thereof as provided in the Charter, and does not authorize it to cross over and occupy the north side or the entire river.

Fourteenth Exception: Because the Master has not reported that no loss of tolls could occur to the Susquehanna Boom Company by reason of the temporary detention of Williamsport logs in the West Branch Boom.

Fifteenth Exception: Because the Master has not reported as established by the evidence that so far as practicable only logs destined for Lock Haven have been taken by Defendant into her boom.

Sixteenth Exception: Because the Master has not reported that H. Brown, Charles Hibard, James V. Brown, B. C. Bowman & Co., Eder, Housel & Deemer, A. C. Finney, E. B. Campbell, Supt., John G. Reading, Charles Bartles, John G. Reading, Executor, Augustus G. Richey, William P. Emery, Judiah Higgins and George H. Bartles, trading as Reading, Fisher & Company, Plaintiffs failed to support the averments of the bill by evidence and therefore the bill as to the complaints of said Plaintiffs should be dismissed.

Seventeenth Exception: Because the Master has not reported as established by the evidence that the extreme charter limits of the Susquehanna Boom do not reach to within ten miles of the West

Branch Boom and the Lock Haven Dam, the point above which logs are caught by the owners and put into the canal: that the Susquehanna Boom Company was not at the time of the filing of this bill, nor had she ever been the owner of any logs whatever: that she owed no duty to and possessed no control over logs floating upon the river until they entered the limits of her boom, and that therefore said Susquehanna Boom Company has not been injured by any act of Defendant.

Eighteenth Exception: Because the Master having reported as a fact that "The West Branch Boom Company have used a sheer-boom attached to the north shore of the river continuously from the time of the construction of its boom, and in about the same relative position to the upper pier of the main boom," has failed to report as a conclusion of law that the Plaintiffs are by their own laches as established by the evidence, estopped from now complaining of the continued maintenance and use of the same by the Defendants on the north shore of the river.

Nineteenth Exception: Because the Master erred in reporting as follows: "In conclusion the Master reports that the sheer-boom complained of is an unlawful obstruction in the West Branch of the Susquehanna River, placed there by the Defendant: that the Susquehanna Boom Company and B. C. Bowman & Co. are shown to have sustained or are likely to sustain injury therefrom, and that in his opinion the injunction heretofore granted should be made perpetual."

SEYMOUR D. BALL,
S. R. PEALE,
Solicitors for Defendant.

REPORT OF MASTER DISMISSING EXCEPTIONS.

To the Honorable, the Judges of said Court:

Exceptions to the foregoing report were filed on the part of Defendant before the Master on the 19th day of February, A. D. 1879, and the same are hereto attached.

The First exception seems to controvert indirectly the Master's 5th finding of fact. The Master is of opinion that the finding complained of is strictly in accordance with the evidence.

B. C. Bowman states in his testimony that in 1878 when he gave his evidence, and for many years prior thereto, he was engaged in the lumbering business at Williamsport, and procured his logs from above the West Branch Boom.

(See printed testimony, page 18.)

M. Eder swears that he was engaged in manufacturing lumber at Williamsport from 1862 to some time in 1877, and that the stock of logs of his firm came principally from above the West Branch Boom.

(See printed evidence, page 30.)

The Third exception is to the tenth finding of fact in which the Master states that the sheer in use down to A. D. 1874, was one hundred and fifty feet in length; Dudley Blanchard, Defendant's witness swears that the first sheer was stiff, and one hundred and fifty feet in length, and the Master fails to find in the evidence anything to show that it was lengthened until A. D. 1874.

(See printed evidence, page 32.)

The other exceptions raise questions presented to the Master on the argument, and after due consideration he considers them unfounded.

M. F. ELLIOTT, *Master.*

February 20, 1879.

AFFIDAVITS ON MOTION FOR ATTACHMENT.

THE SUSQUEHANNA BOOM COMPANY, *et al.*	In the Supreme Court of Pennsylvania.
vs.	No. 1,
THE WEST BRANCH BOOM COMPANY.	In Equity.

STATE OF PENNSYLVANIA, } ss.:
CLINTON COUNTY. }

Personally appeared before me an Alderman on and for the City of Lock Haven, Edwin H. Welch, who being duly Sworn according to law deposed as follows:

I am a civil engineer by profession. Have pursued engineering as a profession for about sixteen years. I have made two surveys of the West Branch Boom at Lock Haven, Pa., one in 1869 and the other this week on May 1st, 1877. I was assisted in the

last survey by Ellison McClean, a civil engineer, R. B. Hayes and Thomas Yardley. The accompanying draft represents the main boom, sheer-boom and other parts as I found them. The Measurements noted upon said draft by me were carefully made by us and I believe the same to be correct as stated on said map. The sheer-boom is five hundred feet in length. The width of the river immediately opposite said sheer-boom abutment is five hundred and fifty feet to low water mark on the day of survey. The width of river at the upper or cut water pier of main boom is four hundred and thirty feet, being from said pier to south bank two hundred feet and from said pier to north bank two hundred and thirty feet as noted on map. The sheer-boom is represented on said map as lying along shore. The dotted line on the map proceeding from the extreme end of said sheer-boom represents the arc described by the said sheer-boom when it is extended as used in the river. The distance between the extreme end of the sheer-boom thus extended and the upper pier of the main is four hundred feet. The banks of the river on the north side are much worn by the action of the water and much lower than the banks on the south side. My draft correctly represents the flats on one side and hillside on the other side of the river. The measurement at the upper or cut water pier above stated was made by careful triangulations and shows the distance across the river to the water line as found on the day of the survey, the water was decidedly low for the season of the year. These measurements were made on the first day of May, 1877. The distance immediately opposite the sheer-boom abutment was obtained not by triangulation but by measurement on the map. The map hereto attached is made six hundred feet to the inch.

And further saith not.

EDWIN H. WELCH.

Sworn and subscribed before me May 5, 1877.

ORRIN T. NOBLE, Alderman.

SUSQUEHANNA BOOM CO.

vs

WEST BRANCH BOOM CO.

In the Supreme Court of Pennsylvania.

LYCOMING COUNTY, s. s.

B. C. Bowman, being duly sworn according to law deposes and says, that he resides at Williamsport, Pennsylvania, and is engaged in the business of manufacturing and selling lumber and is also a director in the Susquehanna Boom Company, and is familiar with all the details of lumbering. Deponent further says that he has read the affidavit of Daniel Null, and examined the sketch appended to the same and that the effect of the contrivance therein described as used by the said West Branch Boom Company is to act as a perfect sheer-boom and to direct almost all logs coming down the river into the main boom of the said Company, that the extension of the abutment at the bend in the river on the north there is a most serious obstruction as it turns the current and logs floating therein over to the south shore, the extension making this abutment very much longer than ever before within deponent's knowledge, and this extension together with the contrivance used as a sheer makes it well nigh impossible for logs to get past that boom; that the catching of logs in that boom which are destined for Williamsport Mills and belonging to Williamsport lumbermen is a very serious damage to them and entails upon the Susquehanna Boom Company, great loss and much greater expense than would otherwise be required.

And deponent further says that during the present season there has been no large flood in the river but a succession of light floods and the West Branch Boom Company by the use of the said sheer have been able to fill their boom or nearly so on each of these light floods and then when they turned through that boom the logs caught by them, which were destined for Williamsport or points below Lock Haven the floods would have gone down and the Susquehanna Boom Company has therefore been compelled to employ a large force of men on the river between Williamsport and Lock Haven removing such logs from the bars and shores where they have caught at the falling of the water and driving them to the Susquehanna Boom; that the larger part of such logs would have naturally come down into the Susquehanna Boom on same floods had they not been stopped at Lock Haven in the manner above described, and in consequence great additional expense has been caused to the said Susquehanna Boom Company and loss has been caused to lumbermen at Williamsport by the delay in receiving their logs. Deponent considered the present sheer used by the said West Branch Boom Company to be as serious an interruption to the navigation of the river as the sheer-boom formerly used by them and just as injurious to the complainants, or even more so.

Sworn to and subscribed before me this 3rd day of May, A. D. 1880.

B. S. BENTLY, JR.
U. S. Commissioner, W. D. Penna.

B. C. BOWMAN.

SUSQUEHANNA BOOM COMPANY
vs.
WEST BRANCH BOOM COMPANY

In the Supreme Court of Pennsylvania.

LYCOMING COUNTY, SS:

Fremont Kinley, being duly sworn according to law deposes and says: That he resides at Williamsport, Pa.; that on the 6th day of March last he was coming down the West Branch of the Susquehanna River on a timber raft, and passed by the West Branch Boom at Lock Haven; that a portion of the boom sticks between the upper and second cribs of the boom had been stiffened and this portion was extended out into the river towards the north bank. There was a man on the upper crib and another on the sheer, from the upper end of which a rope ran to the upper crib. When deponent first saw this sheer they were pulling it towards the piers to let our raft go by.

Deponent further says that there is a permanent crib built out into the river from the north shore at the bend in the river above the upper pier. It extends out into the river about one hundred feet. There were six men on our raft to work it, but we had a good deal of trouble to get around that pier. This pier or crib throws the current and logs all over to the south shore.

FREMONT KINLEY.

Sworn and subscribed before me this 9th day of April, 1880.

[L. S.] J. C. HILL,

Notary Public.

SUSQUEHANNA BOOM COMPANY
vs.
WEST BRANCH BOOM COMPANY
} In the Supreme Court of Pennsylvania.

LYCOMING COUNTY, SS:

Daniel Null, being duly sworn according to law, deposes and says: That he resides at Williamsport, Pa.; that he was at the West Branch Boom at Lock Haven, on Sunday and Monday, the fourth and fifth of April, 1880, and examined the same carefully; that he found a permanent crib built extending from the bend in the north shore out into the river a distance of about one hundred feet; that the effect of this structure was to throw the current and floating logs over to the south shore so they would go into the boom; that on Monday men were stationed on this crib or abutment who were engaged in throwing logs with pikes over to the south shore, and on Sunday a man in a boat was stationed at the upper end of the boom doing the same thing; that a windlass has been placed on the upper pier or crib of the boom, and a portion of the boom sticks connecting the upper pier and the one next below have been stiffened by strapping long timbers to them, making a strong, stiff and firm contrivance on which a man can safely walk. Instead of being chained closely to the upper pier or crib as heretofore these boom sticks so strengthened are attached by a rope to the said upper crib, and a second rope runs from the same crib to the upper end of the boom sticks just below the stiffened portion already described. This contrivance is operated as follows: The rope is let out till the upper end of the

stiffened boom sticks lies out in the river towards the north bank and acts as a perfect sheer-boom to turn the logs coming down the river into the West Branch Boom. This stiffened section is about one-half of the whole distance or line between the two upper cribs. The distance between these two cribs is about three hundred feet and the stiffened section is about one hundred and fifty feet long, and when extended out into the river toward the north bank as deponent saw it on Sunday and Monday last it reached to within one hundred feet of that bank. The consequence is that logs cannot get past the Lock Haven Boom, almost all are turned into it. The second rope running from the upper crib to the boom sticks about half way down to the second crib can also be let out and in this way the structure extended as a sheer-boom out entirely across the river, thus closing the channel to the passage of any floating logs.

Deponent further says, that he saw this contrivance in use on both Sunday and Monday last; that on both days the stiffened portion was extended out toward the north bank and held by the ropes running to the upper crib; that logs were running in the river during both days; on Monday they were running very thick; that most of these logs passed between the upper crib and the extended upper end of this said sheer-boom and under the rope extending from its outer end to the crib, and these logs would therefore have gone on down the river and past the boom had they not been stopped by this sheer-boom and turned into the main boom. The result was that nearly all the logs that came down the river in those two days were turned into the West Branch Boom.

Deponent further says, he saw logs running in the river and so turned into the main boom at Lock Haven that belonged to Wolverton & Tinsman, Finley, Young & Co., Perley & Howard, B. C. Bowman, Maynard & Co., Edgar Munton, H. Merriman, and many others, all of whom are Williamsport lumbermen, and most of whom have saw-mills at Williamsport.

Deponent further says ,that the said sheer-boom was in charge

of James McGill, an employee of the West Branch Boom Company; that the said McGill informed deponent that he had worked for the West Branch Boom Company for the past eight or nine years; that the present contrivance was only temporary, that they intended during the coming summer or winter to make a stiff boom extending all the way from the second pier up to about twenty-five feet above the first or upper crib, and that they could then extend that boom all the way across the river; that at night they brought up a flat and attached it to the upper pier where some of them stayed all night; that the said McGill also informed deponent that the canal company paid the West Branch Boom Company two cents per log for every log they caught and sent down the canal to Williamsport.

Deponent further says, he has made and attached to this deposition a rough pencil sketch of the structure spoken of by him and used to sheer logs into the West Branch Boom.

DANIEL NULL,

Sworn and subscribed before me this 10th day of April, 1880.

[L. S.] H. HINCKLEY,

Notary Public.

SUSQUEHANNA BOOM CO.

vs

THE WEST BRANCH BOOM CO.

In the Supreme Court of Pennsylvania.

LYCOMING COUNTY, } s. s.
STATE OF PENNSYLVANIA. }

Personally appeared before me, a Notary Public in and for said County, George S. Banger, who, being duly affirmed according to law, did depose and say that he has been the acting Secretary and Treasurer, of the Susquehanna Boom Company for the past eighteen years; that the West Branch Boom Company at Lock Haven has, during the present season, caught and detained a large quantity of logs in their boom belonging to parties at Williamsport, and which are destined for the Susquehanna Boom, until after the floods had subsided, thus necessitating the extra expense of driving said logs into the Susquehanna Boom on a low stage of water: that the driving of these logs has required the expenditure, by the Susquehanna Boom Company, of a large sum of money: that the greater part of said expense would have been saved to the Susquehanna Boom Company had not these logs been detained in said West Branch Boom: that the said Susquehanna Boom Company has, at this time, over fifty men employed on the river, driving into their Boom a large quantity of logs that have been so detained in the West Branch Boom this season, and, in consequence of which detention, the Susquehanna Boom Company has been compelled to stop the rafting out of logs at their Boom until such times as they could gather up and bring down these logs.

GEO. S. BANGER,

Affirmed and Subscribed before me this 30th day of April, A D. 1880.

[L. S.] H. HINCKLEY, Notary Public.

SUSQUEHANNA BOOM COMPANY,
vs.
WEST BRANCH BOOM COMPANY.

In the Supreme Court of Pennsylvania.

LYCOMING COUNTY, ss.:

J. W. Brooks, being duly sworn according to law deposes and says, that he resides at Williamsport, Pa.; that on the sixth day of March last he was coming down the west branch of the Susquehanna River on a timber raft, and passed by the West Branch Boom at Lock Haven; that a portion of the boom sticks between the upper and second cribs of the boom had been stiffened and this portion was extended out into the river towards the north bank. There was a man on the upper crib and another on this sheer, from the upper end of which a rope ran to the upper crib.

When deponent first saw this sheer they were pulling it in towards the cribs to let our raft go by.

Deponent further says that there is a permanent crib built out into the river from the north shore at the bend in the river above the upper pier. It extends out into the river about one hundred feet. There were six men on our raft to work it, but we had a good deal of trouble to get around that crib. This crib throws the current and logs all over to the south shore.

J. W. BROOKS.

Sworn and subscribed before me this
9th day of April, A. D. 1880.
[L. S.] J. C. HILL, Notary Public.

THE SUSQUEHANNA BOOM COMPANY, et al.	In the Supreme Court of Pennsylvania.
	Term 187
vs.	No. 1.
THE WEST BRANCH BOOM CO.	In Equity.

DAUPHIN COUNTY, ss.:

Before me the Prothonotary for said Court ..... personally appeared Joseph McGill who being duly sworn doth depose and say that he is now and has been for the last five years Boom Master in the employ of the said, The West Branch Boom Company as heretofore testified, that since his former affidavit he has heard read the affidavit of Daniel Null in this case and has examined the sketch or draft there to attached, that the structure referred to by him is a portion of the Boom of the defendant erected in the south part or half of the river and is only a widening of the upper end of the boom about thirty feet and is operated entirely from the piers of the boom; that this deponent helped to construct the same and has frequently seen it in use, that no rope was attached to the same in any way connected with the north shore, nor is such a rope necessary to operate the structure the current of the river being sufficient to hold it out in the stream when in use and if such a rope was ever attached to it, it must have been temporary, and without this deponents orders or so far as he knows without the order of any officer of the defendant.

That the abutment represented by the draft of Daniel Null and spoken of by him as extending one hundred feet from the north

shore into the river is the same which has been erected at that point or turn in the river for years, and was erected and is kept up there to preserve the banks of the farms below it and was used also to attach the sheer to when in use before the order of the Court prohibiting its use.

That the said defendant never employed any men to push logs into her boom destined for points below.

That the draft attached to the affidavit of Daniel Null does not correctly show the position of said abutment, nor does it correctly show how the opening at the upper end of the boom is widened; the current at the point where the abutment is placed is changed to the south by the banks of the river and not by the said abutment, and said boom is widened by the current in the river and not by any rope attached to the north shore of the river.

That in the use of the said boom and structure above mentioned Defendant did not turn into her boom logs destined for points below and no such logs went into her boom except such as floated in naturally.

JOSEPH McGILL.

Sworn and Subscribed before me,
this the 5th of May, A. D. 1880.
[L. S.] ROBT. SIMPSON,
Prothonotary S. C. M. D.

SUSQUEHANNA BOOM CO.

vs

WEST BRANCH BOOM CO.

In the Supreme Court of Penn'a. No.

LYCOMING COUNTY, ss.:

Fletcher Coleman being duly sworn doth depose and say, that he resides at Williamsport, Lycoming County, Pennsylvania, where he has been engaged in the lumber business for about twenty years. That he is well acquainted with the boom structure of the West Branch Boom Company, Defendant, located at Lock Haven, Clinton County, Pa. That he went past the West Branch Boom, so called, on the 29th day of March, 1880, and observed the changes and alterations which have been make by the said company in their boom structure, as described in the affidavit of Daniel Null in detail. At this time the "side boom used as sheer" as shown in the sketch of the same attached to affidavit of Daniel Null, was thrown out towards the North Bank of the river, and more so than is shown in the said sketch. The logs were then running in the river, and the effect of the throwing out of the side boom toward the North Bank, in connection with the extension of the abutment as shown in sketch was of necessity to throw all or nearly all of the logs floating down the river into the boom of the West Branch Boom Company, in fact at the time deponent observed the said structure it was an exception for a single log to pass by. Deponent further states that he has examined the sketch or draft attached to the affidavit of Daniel Null, and he believes that the same correctly shows the location and general features, and also the operations of said structure.

F. COLEMAN.

Sworn and Subscribed before me,
April 30, 1880.

[L. S.] B. S. BENTLEY, JR.
U. S. Commissioner, W. D. Pa

THE SUSQUEHANNA BOOM CO. } In the Supreme Court of Pennsylvania.

vs.

THE WEST BRANCH BOOM CO. } No..... In Equity.

LYCOMING COUNTY, SS:

Seth T. Forsman, being duly sworn doth depose and say, that he resides in the city of Williamsport, Pa., where he has been engaged in the lumber business for the past ten years. That he is well acquainted with the boom structure of the West Branch Boom Company located at Lock Haven, Clinton county, Pa.; that on or about the 25th day of March, 1880, he was at the said West Branch Boom and observed the changes and alterations which have been made by the said company in their structure as described in the affidavit of Daniel Null in detail. That at the time he was there the "side boom used as sheer," as shown in the sketch of the structure attached to the affidavit of Daniel Null, was thrown out nearly, or quite, to the north bank of the river—in fact it so nearly closed the whole river that nothing could pass by. That it remained in this position, excepting when drawn in toward the middle of the stream to allow the passing down of rafts. That the unavoidable result of this device is to virtually close the stream, when the said side boom is thrown out toward the north bank, and thereby turn all logs coming down the stream into the boom of the West Branch Boom Company. That he has examined the sketch attached to affidavit of Daniel Null and believes the same correctly shows the location and general fea-

tures of said structure and the operation of the same. Deponent further says, that when the said side boom, so used as a sheer, was drawn up to its proper position, between the upper and second piers, to allow rafts to pass by, then, the logs floated freely past the boom, and down the river, showing that the effort of the said side boom when thrown out as a sheer, was to catch the logs, which would otherwise pass by.

S. T. FORSMAN.

Sworn and subscribed before me May 1st, 1880.

[L. S.] B. S. BENTLEY, JR.,

U. S. Commissioner, W. D. Pa.

SUSQUEHANNA BOOM CO.

vs

WEST BRANCH BOOM CO.

In the Supreme Court of Pennsylvania.

LYCOMING COUNTY, ss.:

Michael Barry, being duly sworn according to law deposes and says that he lives in Williamsport, Pennsylvania, that on the twenty-seventh and twenty-eighth of April, 1880, he was at the head of the boom structure of the West Branch Boom Company at Lock Haven, Penn'a, and carefully examined the contrivance now used by said West Branch Boom Company as a sheer-boom, that he has read the description of the same contained in the affidavit of Daniel Null sworn to on the 10th of April, 1880, and has examined the pen and ink sketch attached to said affidavit; that the said sketch and the said affidavit correctly represent and describe the same; that on the two days above mentioned when deponent was at the said boom, the said sheer was extended out into the river towards the north shore and the effect would be to stop and turn into the main boom almost all the logs running in the river.

His
MICHAEL X BARRY.
Mark.

Sworn and Subscribed before me this 3rd day of May, A. D. 1880.

[L. S.]

B. S. BENTLEY, Jr.
U. S. Commissioner W. D. Penn.

THE SUSQUEHANNA BOOM COMPANY	Supreme Court of Pa.
vs.	No. 1.
THE WEST BRANCH BOOM COMPANY.	January Term, A. D. 1877.

The map of Defendants hereto attached Correctly Represents the upper portion of the West Branch Boom at Lock Haven, and the abutment on the north shore. I have known this locality for twenty years and I believe the above map to be substantially correct.

The map of Plaintiffs which I have carefully examined is not correct in its representations of the abutment, the shore lines adjacent thereto, and the upper end of the main boom, and the wing.

THOMAS YARDLEY.

Thomas Yardley being duly sworn according to law deposes that the above facts are true as therein stated.

ROB'T SIMPSON,

Prothonotary Supreme Court, Western District.

IN THE SUPREME COURT OF PENNSYLVANIA.

THE SUSQUEHANNA BOOM COMPANY, *et al.*, *Plaintiffs*,

AND

THE WEST BRANCH BOOM COMPANY, *Defendant.*

Of January, A. D., 1877.

No. 1. In Equity.

CLINTON COUNTY, SS:

Before me a Notary Public in and for said County, personally appeared Joseph McGill, who being duly sworn doth depose and say, he is now and has been for the last five years Boom Master in the employ of the said the West Branch Boom Company, and during all that time he has had constant charge of the Booms of said company and of the men employed in operating them and about them, and almost daily during said time he has worked upon and looked after the working of the boom, at such times as logs were floating in the river, and when they could be rafted or turned out of the boom; he has also had constant charge of the sheer-boom of Defendant; that by injunction of this Honorable Court, said Defendant her officers and agents, were commanded not to use the sheer-boom which had been attached to the north shore of the river, and which had for many years been in constant use by the Defendant, and by a further order of the Court made

in the spring of the year 1878, said sheer-boom was directed to be taken from the river so that it might not be used, that the Defendant, her officers, agents and employees have never used said sheer-boom since said injunction was served upon them for turning logs into her boom, and immediately after said order made in the spring of 1878 said sheer was taken out of the river and placed in a harbor or gully which is on the land of Mrs. P. J. Allen and the heirs of Joseph Hamel, dec'd., and has not since then used it to turn logs into her boom, and to make certain that it might not be used by other parties not connected with said boom company soon after said order in the spring of 1878 he had one of the chains taken from it, and last winter took both windlasses away so as to disable it and render it useless to any one, and this deponent in obedience to strict orders from the officers of the Defendant has been careful to see that said sheer should not be used and he knows it has not been used as aforesaid by any one from the service of said injunction to the present time, which injunction has been carefully and in good faith obeyed in every particular by the Defendant, her officers, employees and agents, all of which employees are under his charge and direction, subject to the orders of the officers of the Defendant.

And further that this spring the water has been comparatively low, there not having been a good flood to this time, and consequently few logs have been got in and all logs which have reached Defendants booms have been rapidly rafted out, and after to-day there will be few if any logs in the boom, destined for parts below.

JOSEPH McGILL.

Sworn and subscribed before me this 3d day of May, A. D., 1880.

S. M. McCORMICK,

Notary Public.

CLINTON COUNTY, SS:

Before me a Notary Public in and for said County, personally appeared William L. Allen, who being duly sworn doth depose

and say that he has heard the above and foregoing deposition of Joseph McGill, read, and that the statements therein contained with reference to the sheer-boom of the West Branch Boom Co., are true and correct; that this deponent resides on the land where said harbor or gully is located, and has been there almost every day for the last eight years.

WM. L. ALLEN,

Sworn and subscribed before me this 3d day of May, A. D., 1880.

[L. S.] S. M. McCORMICK,

Notary Public.

SUSQUEHANNA BOOM CO.	In the Supreme Court
vs	of Pennsylvania.
THE WEST BRANCH BOOM CO.	No. 1, Jan. Term, 1877

DAUPHIN COUNTY, ss.;

Thomas Yardley, being duly affirmed deposes and says as follows: to wit, I reside in the City of Lock Haven. Have for many years been Treasurer and Superintendent, of the West Branch Boom Company, and am now.

That in ignorance of what complaints the Plaintiffs proposes to make as a ground for attachment against Defendant her officers and employees, I do hereby depose and declare that the Injunction of your Honorable Court, has at all times been strictly obeyed in letter and spirit by the Defendant and her officers and employees: and since the granting of said Injunction the Defendants have not used the sheer complained of or any sheer or attempted to do so, but have simply used their main boom less a sheer; that in fact they removed and disbled their sheer so that by no possibility could it be used by anyone.

The deponent desires to be understood by the Court as affirming in the broadest sense that no infraction or evasion of the Injunction has been committed, attempted or permitted by the Defendant, her officers or employees or any of them.

And further deponent saith not.

THOS. YARDLEY.

Sworn to and subscribed before me
this 4th day of May, 1880.

ROBT. SIMPSON.
Prothonotary S. C. M. D.

THE SUSQUEHANNA BOOM COMPANY,	In the Supreme Court of Pennsylvania.
vs.	No. 1,
THE WEST BRANCH BOOM COMPANY.	January Term, 1877.

DAUPHIN COUNTY, ss.:

Thomas Yardley, being duly affirmed according to law hereby supplements his foregoing affidavit (having in meantime read the affidavit presented to the Court by the Plaintiff) as follows—to wit.

The structure described in Plaintiffs affidavit is a part of the Defendants main boom erected on the south side of the river, a temporary contrivance used by the Defendants at time of *slight floods*, to enable the employe's of the Defendant to select and seperate the Lock Haven logs from the Williamsport logs. It is no advantage to the West Branch Boom Company to turn *in* Williamsport logs, for they must turn them *out* again, free of charge.

There have not been any high floods this season, and if Williamsport logs have been detained it has been for this cause and not from any obstruction by the West Branch Boom. The structure complained of is not a sheer; is not operated from the north, but from the head pier of the main boom, and may be not inaptly termed an assorting fin or wing which ought not to be objected to. It is

useful only in moderate stages of water, and it is of but little importance whether it is used at all or not.

No logs destined for Williamsport or the Susquehanna Boom have been turned *into* the West Branch Boom by reason of said arrangement of the main boom. Only such logs as have floated into the West Branch Boom on the natural current, have been stopped in the West Branch Boom, and they but temporarily, so that at the present quite or nearly all have been passed through and beyond said boom.

The crib referred to by Mr. Null in his affidavit, as being situate on the north shore and extending out into the river one hundred feet, is the same which has stood upon this cape or point for years. It is necessary for the protection of the banks. It is grossly exaggerated in the diagram of the Plaintiffs. It is the same pier to which the former sheer was attached. It does not extend out into the river, but is built upon a natural point, and the shore lines lead to or nearly to its front, instead of its rear as shown by Plaintiffs map. It has been repaired this spring as it has been from year to year, but not enlarged or extended. Were it not for this pier the valuable forms below it would be well nigh destroyed by the force of the current and logs, at high flood. The shores formerly extended out beyond it.

As to the use of a flat at night and of course boom hands work night and day, and use flats and other crafts, but if it is intended by the Plaintiffs that Defendants emyloye's stealthily by night disobeyed the Injunction granted in this case or unlawfully obstructed the stream, it is simply false.

As to what James McGill may have said, deponent knows nothing, but I know that he was not authorized by the Boom Company to say, or do anything more than his daily labor. He is a mere laborer, and is not an officer of the Company or even boom Master. The boom Company have never had such folly in contemplation as stated in affidavit as having been stated by McGill.

As to the catching of logs by parties to be run down the canal the West Branch Boom Company have nothing to do with it and

have, as the evidence taken before the Master shows, filed a Bill in Equity in Common Pleas of Clinton County to prevent it.

There is *no complaint in the Bill* filed in this case, against the use of this part of the main boom in the manner set forth herein, neither did it enter the minds of the Defendants that it was in the slightest degree a violation of the Injunction of the Court, nor that it could be tortured into a seeming evasion thereof. The use of this appliance at the head of the main boom has been made in good faith and your deponent avers that it is not, and was not intended to be, the slightest infringement of the rights of the Plaintiffs,

THOS. YARDLEY,

Sworn and subscribed before me
May 4, 1880.

ROBT. SIMPSON,
Prothonotary S. C. M. D.

APPLICATION FOR ATTACHMENT.

BOOM COMPANY
vs.
BOOM COMPANY.

Application for attachment against the Defendant.

Per Curiam.

In obstructing the navigation of the river between the piers and the north bank, we think the Defendant has disregarded the express command and true spirit of the injunction. Inasmuch, however, as it has purged itself of any intentional violation thereof, we will give time for the Defendant to remove without any delay, every obstruction it has put between the piers and the north bank of the river; and in the mean time we will continue this application till further ordered

OPINION OF THE COURT.

SUSQUEHANNA BOOM CO. *et al.*	Supreme Court, No. 1 January Term, '77.
vs	In Equity.
WEST BRANCH BOOM CO.	Argued June 2, 1880.

GORDON, J.

The contention in this case is mainly, if not entirely between the two Boom Companies, for, from the evidence, it does not appear that the mill men at Williamsport have much, if anything, of which to complain, and indeed, if some of them who have sworn in the case, are to be believed, more of benefit than detriment has resulted to them from the operations of the defendant. However, as the Master has found in a general way that log owners, without specifying who they are, do suffer some injury in consequence of delay occasioned by the defendant's structures, and more specifically, that the Susquehanna Boom Company does sustain some loss of tolls in consequence of the opportunity af-

forded to the Williamsport mill owners, by the stoppage of their logs at Lock Haven, to raft and run them through the canal, we may concede for the purposes of this case, that the plaintiffs have personal interest enough in the subject matter in controversy to sustain this bill. Then whether the defendant has the right to the use of a sheer, by which, at least occasionally and for a short time, logs, intended for the Susquehanna Boom, must be stopped, depends altogether upon the powers conferred upon it by its charter. Beyond this it cannot go; it must abide by what is written therein, or what arises therefrom by necessary implication. The matter is of course of very serious consequence, not only to the defendant, but also to the mill owners and citizens of Lock Haven. The Master has found, and in this he is fully sustained by the evidence, that the lumber interests of Lock Haven depend almost wholly upon the maintenance of the West Branch Boom, and that this boom is of little value without a sheer. If the sheer in controversy cannot be maintained, neither can the main boom, nor the very extensive and valuable business dependent upon it, be maintained. We must therefore, as carefully and as well as we can, examine the Legislative will, upon which the defendant depends for its powers. The language of the second section of the Act of Incorporation is as follows:—

"That said corporation are authorized and empowered, to erect and maintain on the South side of the West Branch of the river Susquehanna between a point opposite Heiner's Run and the mouth of Bald Eagle Creek, such boom or booms with piers as may be necessary for the purpose of stopping and securing logs, masts or spars, and lumber floating upon said river, and erect such piers, side branches or sheer-booms as may be necessary for that purpose."

This grant is entirely sufficient to enable the defendant to do all it claims to have a right to do, and if the Act stopped at this point, there would be little or no room for controversy.

The clearly expressed intent of the Act is, that the Company shall have the power to stop all such logs, masts, spars, and lum-

ber as may be found floating, not upon any particular part or side of said river, but generally upon the whole of it. But as this could not be accomplished by a permanent structure, confined to the south side of the stream, therefore the additional power was granted of constructing sheer-booms by which logs could be caught and turned into the main boom. How necessary a sheer is for the susccessful conduct of the business intended, we need not stop to inquire, since the Master has informed us that without it, the boom itself would be next door to valueless, and indeed this anyone can understand for himself when he reflects that, without it, one-third or one-half the logs must, of necessity run past the very mills they are intended to supply with the granting part of this section then, there is no difficulty; it is only when we come to the proviso that we find room for doubt and hesitation.

"*Provided* that said boom shall not extend more than half way across said river, and shall be so constructed as to admit the safe passage of rafts, boats, logs, masts, spars or other lumber, and not impede the navigation of said river, and the branches thereof.

A literal construction of this proviso utterly defeats the grant. For, as we have seen the boom without a sheer, and that from the north side of the river is *almost* worthless, but more than this, if the boom itself must be so constructed as to allow the passage of boats, rafts and lumber through it, it is *wholly* worthless, since in that case it would hold nothing. This, however, will not do, for a proviso, in a grant for a public franchise, cannot be allowed to defeat the grant itself. Whittaker v. The Canal Co. 6 Nov. 34

Moreover, by the 6th Section of the Act of incorporation, the company is required to see that no lumber escapes from its booms, either by day or night, and in order to render this certain, it must "cause the passage ways or spaces in said booms to be carefully guarded."

From this it would seem that the words "said booms" in the proviso means fixed structures, designed to secure lumber after it

has been caught and hold it until it has been rafted out, and furthermore that it could not have been intended that through them there should be a passage way for rafts, boats and logs. So, in like manner it would seem that "said booms" do not mean sheers for they are not designed to hold lumber, but only to turn it into the main structure, yet whilst it thus seems to be obvious that the Legislative intention was to give the company the right to occupy, with its permanent boom, the south half of the river, and in this manner to close that part of the stream from public navigation, nevertheless, the proviso, in most positive terms, not only requires that said booms shall not extend more than half way acrosss the river, but also, that they shall be so constructed as to admit the safe passage of boats, rafts, etc. This is certainly perplexing.

We might see our way out of the difficulty, could we but say that the intention of the act was fulfilled by leaving one-half of the river unobstructed; but this will not do, for a literal reading of the proviso requires the booms themselves to be so constructed as to admit of free navigation through them. Then, on the other hand, as we have seen, we are met with the equally imperative command of the fifth section, requiring that they shall be so constructed as to present the escape of lumber from them. As it is impossible to harmonize these seeming contradictions by a literal reading of the sections referred to, we must disregard such reading and look through the whole act in order to discover its general design and intention, when, however, this position is assumed, we are not long in reaching the conclusion that the Legislative intention was to permit the company to obstruct the south half of the river with permanent structures, "boom or booms with piers," whilst their sheers must be so arranged as to admit of the safe passage of rafts, boats and lumber. To this interpretation of the Act there is and can be no serious objection, for it is the only one which renders the statute intelligible.

But then the question remains: Shall the sheer be swung from the south or north shore of the river? The Plaintiffs contend that if a sheer is at all allowable, it must be projected from the south shore, and only half way across the river, or if the main boom occupies less than half of the stream, a sheer may be used to close what

remains of the charter limits.

Neither of these propositions, however, can be sustained, for if the sheer were attached to the south shore, it would be useless; it might be used to turn logs out of the boom, but not into it. In the other case, even supposing it to be practical, which it is not, to swing a sheer from the upper end of the boom out into the stream, it could, by the proposition, only reach to the middle of the river, and so being within that part of the stream which the charter allows to be permanently obstructed, it would in effect be part of the main structure which requires no special arrangements for the safe passage of boats, rafts, &c.

In other words, we would have a projection of boom logs without supporting piers, a piece of patchwork commendable neither for its utility or its ingenuity. Nothing is more obvious than that a proposition such as this can only be adopted to avoid the conclusion, otherwise inevitable, that if a sheer is to be used at all, it must swing from the north shore. But the Act does allow of the use of sheer-booms, and as we have seen, without at least one such boom, the Defendant's grant is practically useless.

Floating logs intended for Lock Haven must by some means be turned into the artificial harbor provided for them, and this can be done successfully only by a sheer-boom attached to the north bank. Nor are we to overlook the fact, that from the time of the erection of this boom, in the year 1849, a sheer from the northern bank has been steadily maintained, and as the Master finds, having about the same relative position to the main boom as it had at the time of the filing of the bill.

So far as appears, to this arrangement, no complaint was made up to the time of the commencement of this suit, and it would thus seem, that the construction put upon the Act not only by the company itself, but by all persons concerned, was, as above stated that a sheer from the north bank was allowable. But again as we have said before, it is only by a construction such as this that the several sections of the Act can possibly be harmonized. Let us look for a moment, at the provisions of the 7th section. Here is a provision,

that any person having lumber upon the river, who is desirous of driving below the limits of the boom, and who does not wish the same rafted therein, shall give notice to the company of such intention, on or before the first of March in each year and thereupon, in the language of the Act, "the corporation upon the receipt of such notice, shall be compelled to take up and turn all logs through their booms, as fast as the owners of such lumber wishing to raft the same below said boom, may desire and no faster."

What singular language to use with reference to a corporation, that if the Plaintiffs are correct have not the power to get a log into its boom, except what the winds and waves may chance to drive into it. Surely it is not open to debate, but that if the Defendant is to be *compelled* to take up logs floating upon the river, it may be permitted to compel such logs to go into its boom we think the proper construction of this Act is fairly worked out in the case of the West Branch Boom Company vs Dodge, et al. 7 Ca. 285, (Per Lowrie C. J.)

The duties of the corporation are divided into three classes:—the first bearing relation to those persons navigating the river with rafts, boats and other craft as to whom it must leave the stream open to navigation at such times as it would be navigable were the boom not there. The second to owners of driven lumber, desiring to have it stopped in the boom, where on notice the Company must take up and secure such lumber; and third to such persons who own logs and desire to have them driven below the boom, in such case an uninterrupted passage must be allowed. It is apparent from the rulings above set forth that in the case cited, the power of the corporation over the whole river is assumed; otherwise it could have no such duties as are here imposed upon it, for it could have but its main boom, confined as it necessarily must be to the south half of the river, what would pass by or what would go into the boom, must be independent of the will and power of the Company and dependent principally upon the accident or chance. Hence to give the corporation notice to take up certain logs, or to say it might be compelled to take up such logs, would be to no purpose and it would be to just as little purpose to direct that it should not obstruct a navi-

gation over which it has no control we are thus brought to the conclusion, which after much examination and thought we regard as inevitable that the Defendant has the right under its charter to maintain and use the sheer which it did have and use at the time of the filing of this bill.

Without such structure, the franchise itself is valueless, neither can the corporation answer the purposes of its creation nor perform the duties imposed upon it by the act of incorporation. It must therefore have its sheer-booms, and of course it must use them in accordance with the terms of the statute. The Act has made ample provision for a free and unobstructed navigation and for the earliest possible transmission of lumber necessarily lodged within the booms, and if in this or any other particular, the Defendant neglects or fails to perform its duty it is answerable for any damages arising from such neglect or failure.

As the Master has not found that there was any damage to the Plaintiffs, arising from a misuse by the Defendant, of its boom, or from any abuse of its powers, this whole controversy ends with the determination of the right of the West Branch Company to maintain and use a sheer-boom from the north bank of the river. We have not considered the several supplements to the act of incorporation as of importance in the determination of this contention, and for this reason have not noticed them.

It is now ordered, adjudged and decreed that the plaintiff's bill be dismissed with costs.

I do hereby certify that the above and foregoing is a full, true and accurate copy of the opinion delivered in the above entitled cause in the Supreme Court of Pennsylvania, Eastern district, and filed in the office of the Prothonotary of said Court.

In testimony whereof, witness my hand and the seal of said Court this 8th day of February, A. D. 1881.

[L. S.] CHARLES S. GREEN,
Prothonotary.

STATE OF PENNSYLVANIA, }
EASTERN DISTRICT. } ss.:

[L. S.]

I, Charles S. Green, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District do hereby certify that the above and foregoing is a true copy of the record in the above case so full and entire as filed of record in said Court.

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court at Philadelphia this fifth day of September in the year of our Lord one thousand eight hundred and eighty-one.

CHAS. S. GREENE,

Prothonotary.

I, George Sharswood, Chief Justice of the Supreme Court of Pennsylvania, do hereby certify, that Charles S. Green was, at the time of signing the annexed attestation, and now is, Prothonotary of said Court, in and for the Eastern District, to whose acts as such full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this fifth day of September, A. D. 1881.

GEO. SHARSWOOD.

I, Charles S. Greene, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do certify, the Honorable George Sharswood by whom the foregoing certificate was made and given, was at the time of making and giving the same, and is now, Chief Justice of the Supreme Court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given as well in Courts of Judicature as elsewhere, and that his signature thereto subscribed, is genuine.

In testimony whereof I have here unto set my hand and affixed the seal of said Court at Philadelphia, this Fifth day of September, A. D. 1881.

[L. S.]

CHAS. S. GREENE,

Prothonotary.

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No. 374. October Term, 1883.

IN THE

Supreme Court of the United States.

THE SUSQUEHANNA BOOM COMPANY, *et al.*,
Plaintiffs in Error,

vs.

THE WEST BRANCH BOOM COMPANY,
Defendants in Error.

Motion to Dismiss, etc.,

Dec. 10, 1883.

Counter Statement and Argument of Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

THE SUSQUEHANNA BOOM COMPANY, *et al.*, *Plaintiffs in Error and Plaintiffs below*,	No. 1002.
	October Term, 1883.
vs.	Writ of Error to the
THE WEST BRANCH BOOM COMPANY, *Defendant in Error and Defendant below*,	Supreme Court of Pennsylvania.

Motion by defendant to dismiss this writ for want of jurisdiction, to be made December 10, 1883.

BRIEF AND ARGUMENT BY PLAINTIFFS IN ERROR.

This was an original bill in the Supreme Court of Pennsylvania.

The issue was between two boom companies, occupying the same river and twenty-two miles apart.

A master took testimony, found the facts, and reported the law in favor of the plaintiffs in error, and recommended a perpetual injunction against the defendant corporation.

Exceptions were filed, the Supreme Court of Pennsylvania heard the argument and dismissed the bill.

A motion for a re-argument was made by the plaintiffs in error. That motion was refused and this writ of error was then sued out.

The real question at issue was, the effect of the charter of the defendant corporation, the junior, upon the charter rights of the plaintiff corporation, the senior.

By the express terms of the former, it was confined to the south half of the river, and logs were to be permitted to run freely to the works of the plaintiff corporation, in the river below.

The Master so found the facts and reported the law.

The State Court has construed the statute so that *all* of the river may be occupied by the corporation defendant, and all the logs consigned to the plaintiff corporation, be required to pass through the works of its adversary, the junior corporation, above.

The cost of the works of the plaintiff corporation, the senior, is reported by the master as $1,250,000; that of those of the defendant corporation, the junior, at $180,000.

The effect of this decision of the court below is necessarily to impair the value of the franchise granted to the senior corporation, and to lessen the value of its stock.

The construction placed upon the charter of the junior corporation, closes the whole river, and impairs the obligation of the prior contract entered into by the State with the plaintiffs below.

This result is plainly seen by even a casual reading of the record, and the decision of the federal question against the plaintiffs in error comes into full view upon an examination of the briefs and arguments.

It is not necessary that the record should show this in express terms. It is sufficient, if it appears by fair implication from the whole record that a federal question was necessarily involved, and was actually passed upon.

9 *Otto*, 309, *University* vs. *People*;
16 *Otto*, 95, *Brown* vs. *Colorado*;
14 *Otto*, 427, *Boughton* vs. *Bank*;
12 *Otto*, 248, *Williams* vs. *Bruffy*;
1 *Otto*, 594, *Bolling* vs. *Lersner*.

The question to be *now* determined is substantially admitted by counsel for defendant in his argument, when he says, "the court (below) was only called upon to decide, "whether, upon a proper construction of the respective char- "ters of said corporations, the West Branch Boom Company "had the right to construct, maintain and use a sheer in the "north half of the river, to turn floating logs into its main "boom in the south half thereof."

It is precisely this we complain of, namely, that it did so decide, and by that decision has impaired the obligation of the contract we made with the State.

The court below has in fact construed our rights out of existence.

This court is not bound by that construction. It decides for itself, whether a contract is or is not impaired by a later law.

9 *Otto*, 309, *University* vs. *People*;

1 *Black*, 436, *Bank* vs. *Skelly*;

1 *Wall*, 144, *Bridge* vs. *Hoboken*;

14 *Wall*, 668, *Delmas* vs. *Insurance Co.*

The real questions now to be settled are:

1. Was the federal question actually passed upon? and

2. Does the decision thereof impair the obligation of our prior contract?

Both are answered affirmatively by the record:

A. The original bill quotes the law of 1846 and rests the rights and privileges of the plaintiff upon its terms. (Pp. 18-19.)

It quotes defendants' charter, and defines its right to but half of the river. (P. 20.)

It follows its complaint of the sheer boom with these words: "Which said structure or sheer boom is, as your "orators aver and charge, not only wholly unauthorized by "the provisions of the charter of the said corporation "defendant, but is in direct violation of the provisions of "their charter; and is further, as your orators charge, an "infringement of the rights of the said Susquehanna Boom "Company." (P. 21.) And:

It prays for an injunction against closing the river.

B. The affidavit of John G. Reading and Peter Herdic filed with the bill, (paragraph 10,) covers precisely the same ground of complaint. (P. 29.)

C. The answer of the defendant quotes its own charter, shows itself in terms entitled to but half the river (p. 37), and seeks by construction to obtain possession of the whole.

That answer on page 38, at the end of clause 11, uses these words: "And she joins issue with the parties plaintiff "as to their averments that said structure is not only wholly "unauthorized by the provisions of the charter of said cor- "poration defendant, but is in direct violation of the pro- "visions of their charter, and is, further, an infringement of "the rights of the Susquehanna Boom Company, and the "rights of her co-complainants."

The issue is thus fairly joined by bill and answer upon the point vital now.

The report of the Master is full to the same point, namely, that the real question was the right under law to close the north half of the river. At page 142, he says, "The real question involved is whether the West Branch "Boom Company, under its charter and supplements thereto, "has the right to occupy the south half of the river with its "main boom, and attach a sheer five hundred feet in length "to the north shore, and extend it into the river to such a "point as that the sheer, together with the main structure "of the boom, constitutes a practical occupancy of the whole "river, from shore to shore, so far, at least, as floating logs "are concerned."

The exceptions to the report of the Master, filed by counsel for corporation defendant, at page 150, says, "The "questions involved, *inter alia*, are:

"*First.*—Is the West Branch Boom Company authorized by its charter and the supplements thereto, to erect and maintain a sheer on the opposite (or north) shore of the river from the main boom?

"*Second.*—If yes, *What are the restrictions or limitations contained in said charter* and supplements, upon the extent and manner of use of said sheer?

"*Third.—Can the plaintiffs in this bill, or either of them, complain?*"

These propositions cover the whole ground of the federal question actually made and decided.

The brief of argument for plaintiff below, in the State Court, at pages 2 and 3, reaffirms the proposition that the franchises granted to the junior corporation were in no way to affect the prior franchises granted to the senior.

The brief of argument of defendant in error, in the State Court, at page 4, declares: "*That a fair and reasonable* "*interpretation of the charter* of the defendant, and its supple- "ments, does not prohibit the defendant from erecting and "maintaining a sheer boom on the north side of the river; "but that, on the contrary, the *same is expressly* authorized "thereby."

Its effort on pages 14 *et seq.* is to show that the later laws affected and changed the plain terms of the charter, and gave the right to close the whole river.

The opinion of the Supreme Court, at pages 182 and 183 of the record, construes the grant to the junior corporation to be, *to close the whole of the river.*

At page 187, it declares that: "The defendant has the "right, under its charter, to maintain and use the sheer."

The bill was accordingly dismissed, and the river allowed to remain closed to the great prejudice of the corporation below.

After this decision was announced, a motion for a reargument was made in the Supreme Court of the State, and refused by it.

In the brief supporting that motion, the plaintiff below, at page 2, said:

"That the later charter to the West Branch Boom "Company must be so construed as to protect the grant "previously made to the Susquehanna Boom Company, "otherwise the grant to the West Branch Boom Company "impairs the obligation of the said contract with the Sus- "quehanna Boom Company; and the decision of this court "upon the subject-matter involved actually does take away

"the rights of the Susquehanna Boom Company contracted "for by it, paid for by it, and used for many years under "the plain terms of its prior charter.

IV. "Because the charter of the West Branch Boom "Company, with its supplements, as construed by this court, "impairs the obligation of the contract between the State of "Pennsylvania and the Susquehanna Boom Company, and "therefore is in violation of the Constitution of the United "States and of the State of Pennsylvania."

The only remaining question is:

Does this decision of the court below impair the obligation of our prior contract?

We were in possession of the river, under the franchises granted, with large sums of money expended, and entitled to a substantial performance by the State of its part of the contract. One of the vital essentials to the value of our grant was a free river, so that logs might pass without hindrance to the booms erected to hold them. The junior charter protected us in this right; the court below has construed it out of existence.

In this court the facts found by the Master are to be taken as true.

We quote from his report:

Clause 4.—"The greater portion of the logs floated into "the Susquehanna Boom are placed in the river above Lock "Haven, and must pass the West Branch Boom before "reaching their destination."

Clause 11.—"The effect of the sheer-boom now used is "to turn all, or nearly all logs floating down the river, into "the West Branch Boom until the same is filled, making "the sheer-boom nearly as effectual as though it extended "from the north shore to the upper pier of the main boom."

Clause 14.—"The logs destined for Williamsport which "are stopped by the West Branch Boom are passed out of "said boom as soon as practicable, free of charge to the "owners thereof. Such logs cannot always be passed out "until the water has fallen in the river, so that the logs so "stopped and turned out cannot be floated to Williamsport on

"the flood which brought them to Lock Haven, but must "remain in the river until another flood shall come."

Clause 15.—"Such delay is an injury to log owners."

Clause 16.—"The Susquehanna Boom Company suffers "injury by the stoppage of logs, destined for Williamsport, "in the West Branch Boom, as follows: Many owners of "logs stopped at Lock Haven procure them to be taken "down the canal to Williamsport, and in that way avoid the "payment of tolls to said Susquehanna Boom Company, "which would not be possible if the logs were not stopped "by said West Branch Boom."

Clause 19.—"The West Branch Boom has cost the "company one hundred and eighty thousand dollars in its "erection, extension and repairs, and the Susquehanna Boom "Company has expended in the erection and extension in its "boom, twelve hundred and fifty thousand dollars."

A federal question has been decided, and that decision impairs the binding force of our contract with the State.

The spring session of the Supreme Court ended in May, at Harrisburg. On the last days thereof, the opinion of this case was filed. When the court next met in October, at Pittsburgh, a motion for re-argument was made, and the following reasons, among others, supported by an argument, were presented to the court.

REASONS FOR RE-ARGUMENT.

The counsel for the plaintiffs respectfully move the Court to grant a re-argument of the above-entitled suit for the following reasons:

First.—Because, while it is asserted in the first sentence of the opinion of the court that "the contention in this case is mainly, if not entirely, between the two boom companies," yet there is no reference in the entire opinion to the chartered rights of the company plaintiff, upon which it stands, and in support of which it prays the protection of this court.

Second.—Because the Susquehanna Boom Company comes into court claiming under certain prior chartered rights, and avers that those rights must be protected by such a construction of the later grant as will not impair the contract of the State with the Susquehanna Boom Company; but the opinion of the court so entirely ignores this position that counsel for plaintiffs, believing they must have failed in clearly presenting the same, respectfully urge the concession of a further argument. From the fact that the earlier charter to the Susquehanna Boom Company is not once referred to in the opinion of the court, it would seem evident that this position has not, either through misapprehension or through failure of counsel, received any consideration whatever.

Third.—Because the charter to the Susquehanna Boom Company, and its supplements, with the large sums of money expended under the same, constituted a contract between said company and the State, and this court does not in its opinion consider a position most strongly urged by counsel for plaintiffs, namely: that the later charter to the West Branch Boom Company must be so construed as to protect the grant previously made to the Susquehanna Boom Company, otherwise the grant to the West Branch Boom Company impairs the obligations of the said contract with the Susquehanna Boom Company, and the decision of this court upon the subject matter involved, actually does take away the rights of the Susquehanna Boom Company, contracted for by it, paid for by it, and used for many years under the plain terms of its prior charter.

Fourth.—Because the charter of the West Branch Boom Company with its supplements, as construed by this court, impairs the obligations of the contract between the State of Pennsylvania and the Susquehanna Boom Company, and therefore is in violation of the Constitution of the United States and of the State of Pennsylvania.

The motion was made November 22, 1880, and was refused, when this writ of error was sued out.

WILLIAM A. WALLACE,
Of Counsel for Plaintiffs in Error.

110-57

No. 374. *October Term, A. D. 1883.*

In the Supreme Court of the United States

THE SUSQUEHANNA BOOM COMPANY et al.,
Plaintiffs in Error,

vs.

THE WEST BRANCH BOOM COMPANY,
Defendant in Error.

MOTION TO DISMISS, &c.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

In the Supreme Court of the United States.

The Susquehanna Boom Company et al., *Plaintiffs in Error and Plaintiffs Below,*

vs.

The West Branch Boom Company, Defendant in Error and Defendant Below.

October Term, 1883.

No. 374.

The counsel for the defendant move the court to dismiss the writ of error issued in said case for want of jurisdiction.

BRIEF AND ARGUMENT.

That this court has not jurisdiction of the case will plainly appear from the following statement of facts, the record, and authorities, viz.:—

1. The writ of error was allowed upon the petition of the plaintiffs, based upon what was not in the case. The ground of the petition, as set forth in the same, is, that "your petitioners believe, and so argued to the Supreme Court of Pennsylvania, that the charter to the West Branch Boom Company must be so construed as to pro-

tect the grant previously made to the Susquehanna Boom Company, otherwise the grant to the West Branch Boom Company impairs the obligation of the contract with the Susquehanna Boom Company; and the decision of that court, upon the subject-matter involved, actually does take away the rights of the Susquehanna Boom Company contracted for by it, paid for by it, and used for many years under the plain terms of its prior charter."

(*a.*) No such claim was set forth in the pleadings in the Supreme Court of Pennsylvania, where the case originated, and was finally decided, as will appear by reference to the bill, answer, master's report, and opinion of that court. See printed copy of record filed, pages 17, 35, 138, and 181.

(*b.*) Neither was such an argument presented when said parties were heard in said court. On the contrary, it was then expressly conceded by the learned counsel for the plaintiffs, in the words of their printed argument, served upon the counsel of the defendant, and handed to the court (a sworn copy whereof is ~~hereto attached and~~ filed. See pages 3 and 4), that "it is perfectly manifest, that if the West Branch Boom Company act within their charter privileges, they have the use of one-half of the river, extending from the south shore, and may occupy that one-half with a permanent boom structure, to catch and hold floating logs and lumber." * * * "We do not say that the West Branch Company may not erect and maintain a permanent obstruction to navigation in the river at Lock Haven, because the navigation would not then be as free as before. We simply say their charter confines them, by strict terms, to the south half of the river. If they so use their right there is no complaint."

(*c.*) The only complaint was, that while the Susquehanna Boom Company claimed the right to extend her booms over the whole river, she claimed that the West Branch Boom Company did not confine the use and opera-

tion of her structures in the river for catching and holding logs floating therein, within the limits designated by her charter; that she used a sheer on the north shore to turn said logs into her artificial harbor or boom with piers, constructed and maintained in the south half of the river, which the plaintiffs claimed she had no right to do, alleging that she must be confined in the use of her boom and sheer to said south half part of the river. The question in the case, therefore, became a question solely of the construction to be put upon the respective charters of said corporations and their respective rights and powers under the same.

On that ground the case was argued, the court rendered their decision, and filed their opinion, before referred to. Months thereafter, counsel for plaintiffs moved the court for a re-argument of the case, and (as is alleged) presented to the court at that time a printed statement of reasons therefor. Of this motion defendant had no notice, nor any hearing before the court. The motion was denied, and the only decision ever rendered by the court is contained in said opinion finally disposing of the case, and the only place where the language above quoted, as the ground of plaintiff's petition for the writ of error, appears, is in said printed statement of reasons, said to have been presented to the Supreme Court of Pennsylvania when said re-argument was asked for. Hence we may justly say the writ of error was allowed upon grounds not in the case as presented to and decided by the Supreme Court of Pennsylvania. Said printed reasons are not a part of the record, but a copy of them is ~~hereto attached~~ to be filed. See page 2.

2. A careful examination of the printed record, filed in this court, will demonstrate that no provision of the Constitution of the United States was relied upon, nor was the protection of any of its sections asked, by the plaintiffs, in the State court; that no Federal question arose there, and

that the only question really raised and decided by the court had relation to the proper construction to be put upon the respective charters of the corporations plaintiff and defendant as aforesaid. The court decided, as they construed said charters, the West Branch Boom Company had a right to use a sheer in the north half of the river, and that using it as it had done, no damage had been done to the plaintiffs. A few quotations from the pleadings will aid in making this appear.

(*a.*) Plaintiffs' bill set forth "that said Susquehanna Boom Company is a corporation created by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the twenty-sixth day of March, A. D. 1846." * * * * "That the said corporation are authorized and empowered to erect and maintain, on the West Branch of the river Susquehanna, between the borough of Williamsport and the mouth of Quineshehoque creek, such boom or booms with piers, as may be necessary for the purpose of stopping and securing logs, masts, spars, and other lumber floating upon said river, and erect such piers, side branch, or sheer booms as may be necessary for that purpose," that said corporation complainant shortly after such incorporation erected and have since maintained such booms, sheers," &c.

"That the West Branch Boom Company, defendant, was incorporated by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the twenty-ninth day of March, A. D. 1849, wherein it is provided * * * * That the said corporation are authorized and empowered to erect and maintain on the *south side* of the West Branch of the river Susquehanna, between a point opposite the mouth of Heiner's run and the mouth of Bald Eagle creek, such boom or booms with piers, as may be necessary for the purpose of stopping and securing logs, masts or spars, and other lumber floating upon said river, and erect such piers, side branches, or

sheer-booms, as may be necessary for the purpose: *Provided*, That said booms shall not extend more than halfway across said river, and be so constructed as to admit the safe passage of rafts, &c., * * * and not impede the navigation of said river," &c.

"That in pursuance of the rights and privileges granted to said corporation by said act of incorporation, it did, within a short time after its incorporation, erect in the West Branch of the Susquehanna river at Lock Haven [about twenty-five miles above the boom of the Susquehanna Boom Company] a boom or booms, with piers for the purpose of stopping and securing such logs," &c. * *

"That in the year 1876 said corporation defendant erected and maintained * * * a wing or sheer boom extending from the *north side* of said river halfway across the same, * * * which said structure or sheer-boom is, as your orators aver and charge, not only wholly unauthorized by the provisions of the charter of the said corporation defendant, but is in direct violation of the provisions of their charter, and is further, as your orators charge, an infringement of the rights of the said Susquehanna Boom Company." * * * * * * *

"That the continued maintenance of said structure * * * * by the defendant, will cause great delay and serious damage to your orators," &c. See copy of record, pages 17–23.

(*b.*) The answer of the defendant "denies the statements contained in the eleventh paragraph of said bill [relating to the erection of said sheer by the defendant in 1876 in the north side of the river] and avers that from about the time of the erection of her said main boom she has constantly year after year used a sheer-boom, extending from the north side of said river where of necessity it must be located, * * * and the one in use at the time of the service of this injunction was substantially the same as used in the year 1876. * * * The said defend-

ant avers in this connection, that all boom companies on the Susquehanna river must, and do of necessity, place their sheer-booms on the opposite shore from the main boom, and that the sheer-boom of the West Branch Boom Company should be so erected and maintained, was the true intent and meaning of the act of incorporation of the said company. * * * That the booms of the West Branch Boom Company are so constructed as to admit the safe passage of rafts, &c., and not impede the navigation of said river," &c. * * * * *

"That the defendant has had a sheer-boom, substantially like the present, in constant use, at the point at which the present sheer-boom is located, for a period exceeding twenty-one years prior to the filing of plaintiffs' bill.

(*c.*) The master reports "that the main structure of the West Branch Boom is located on the south side of the river, * * * the sheer-boom complained of by the plaintiffs is hung by a hinge to an abutment on the north shore of the river, and is worked by means of blades in the water and windlass, and is thrown out into the current or withdrawn at will. * * * The West Branch Boom Company have used a sheer-boom attached to the north shore of the river continuously from the time of the construction of its boom [1850], and in about the same relative position to the upper pier of the main boom. As the main boom has from time to time been extended up the river the sheer has been moved up the north bank accordingly. * * * The master is of opinion that a sheer can not be of any service whatever to the West Branch Boom unless it is hung on the north side of the river, and in substantially the same place where it was at the time the preliminary injunction was granted in this case, and that the boom is of very little value without a sheer." See copy of record, pages 140 and 141.

(*d.*) In said printed argument of counsel for the plaintiffs, they say, "We place the important portion of the

second clause in both charters, with the proviso, in parallel columns, to show the divergence between them, by printing in italics the limiting words of the Lock Haven Company.

Susquehanna Boom Company.	West Branch Boom Company.
Section 2. That the said corporation are authorized and empowered to erect and maintain on the West Branch of the river Susquehanna, between the borough of Williamsport and the mouth of Quinesheocque creek, such boom or booms, with piers, as may be necessary for the purpose of stopping and securing logs, masts, spars, and other lumber floating upon said river, and erect such piers, side branch or sheer-booms as may be necessary for that purpose:	Section 2. That the said corporation are authorized and empowered to erect and maintain on *the south side of* the West Branch of the river Susquehanna, between a point opposite the mouth of Hiner's run and the mouth of Bald Eagle creek, such boom or booms, with piers, as may be necessary for the purpose of stopping and securing logs, masts or spars, and lumber floating upon said river, and erect such piers, side branches or sheer-booms as may be necessary for that purpose:
Provided, That said booms be so constructed as to admit the safe passage of rafts and boats, and not impede the navigation of said river and the branches thereof.	*Provided*, That said booms *shall not extend more than half-way across said river*, and be so constructed as to admit the safe passage of rafts, boats, *logs, masts, spars, or other lumber*, and not impede the navigation of said river and the branches thereof.

* * * * "To give them [the West Branch Boom Company] such permanent and exclusive use of one-half is a liberal construction of the provision in question, but when they attempt to occupy more and to use structures which at any time virtually close the channel of the river to floating logs, spars, &c., then we invoke the limitation placed upon them, and claim that the north half, from which in terms they are excluded, shall be left absolutely free from all abutments, sheers, and obstructions whatsoever, as before it was." * * * "The inevitable construction, then, of the charter of the West Branch Boom

Company and its supplements is this: She is empowered to occupy the south half of the West Branch of the Susquehanna river at Lock Haven, with a permanent boom structure, but the north half of the river shall be left as free for the navigation and passage of boats, rafts, logs, masts, spars, and other lumber as before the erection of the boom it was." See printed argument of plaintiffs filed, pages 2, 3, 4, and 7.

(*c.*) The opinion of the court below sets forth that "the master has found, and in this he is fully sustained by the evidence, that the lumber interests of Lock Haven depend wholly upon the maintenance of the West Branch Boom, and that this boom is of little value without a sheer. If the sheer in controversy can not be maintained, neither can the main boom, nor the very extensive and valuable business dependent upon it, be maintained. We must, therefore, carefully, and as well as we can; examine the legislative ~~bill~~ upon which the defendant depends for its powers."

The opinion then quotes from the charter of the West Branch Boom Company, puts the construction of the court upon the same, with the reasons therefor, and the conclusion is that, "as the master has not found that there was any damage to the plaintiffs, arising from a misuse by the defendant of its boom, or from any abuse of its powers, this whole controversy ends, with the determination of the right of the West Branch Company to maintain and use a sheer-boom from the north bank of the river."

These quotations from the pleadings, master's report, argument of plaintiffs, and opinion of the court show that the validity of no act of Assembly was in any way called in question, but that the court was only called upon to decide whether, upon a proper construction of the respective charters of said corporations, the West Branch Boom Company had the right to construct, maintain, and use a sheer in the north half of the river, to turn floating logs

into its main boom, in the south half thereof, the validity of its charter being conceded, as has been shown.

We conclude, therefore, this court has not jurisdiction, because the only question raised and decided by the State Court turned upon the proper construction of said charters, and not upon the validity of any State law.

Armstrong *et al. vs.* Treasurer, &c., 16 Pet., 281;
The Grand Gulf R. R. Co. *vs.* Marshall, 12 How., 165;
Long *et al. vs.* Converse *et al.*, 1 Ot., 105.

3. This court has not jurisdiction, because it must appear upon the record certified from the State court and filed, that it is one of the cases authorized to be removed to this court from the highest court of a State, and the record filed in this case does not show it to be one of those cases.

Rev. Stat. U. S., section 709;
Armstrong *et al. vs.* Treasurer, &c.;
Christ Church *vs.* Co. of Phila., 20 How., 26;
The Grand Gulf R. R. Co. *vs.* Marshall;
Murdock *vs.* City of Memphis, 20 Wall., 590;
Citizens' Bank *vs.* Board of Liquidation, 8 Ot., 140;
Boughton *vs.* Exchange Bank, 14 Ot., 427.

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